146 U.S. 476

RECORD, CASE No. 13,562.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~362~~ 40

PHILANDER DERBY, ARTHUR P. DERBY, GEORGE HODGMAN, AND GEORGE W. CANN, APPELLANTS,

vs.

DANIEL L. THOMPSON, CHARLES A. PERLEY, AND GILMAN WAITE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED MAY 27, 1889.

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Defendants' Exhibit—

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1 & 2 UNITED STATES OF AMERICA, *Massachusetts District*, } *ss*:

At a circuit court of the United States for the first circuit begun and holden at Boston, within and for the district of Massachusetts, on Monday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and eighty-eight, before the Honorable Le Baron B. Colt, circuit judge.

DANIEL L. THOMPSON *et al.*, Complainants, *v.* PHILANDER DERBY *et al*, Defendants. } No. 2273. Equity.

The bill of complaint in this cause was filed in the clerk's office on the first day of March, A. D. 1886, and was duly entered at the October term of this court, A. D. 1885, and is in the words and figures following:

3 *Bill of Complaint.* (*Filed March* 1, 1886.)

To the judges of the circuit court of the United States for the district of Massachusetts:

Daniel L. Thompson, Charles A. Perley, and Gilman Waite, all of Baldwinsville, in the State of Massachusetts, and all citizens of said State and doing business under the firm name and style of Thompson, Perley & Waite, bring this their bill of complaint against Philander Derby, Arthur P. Derby, George Hodgman, and George W. Cann, all of Gardner, in said State, and all citizens of said State.

And thereupon your orators complain and say that heretofore and before the 28th day of July, 1879, one Joseph W. Kenna was the original and first inventor of a child's chair and carriage; that said invention was not in public use or on sale for more than two years prior to his application for a patent therefor; that said Joseph W. Kenna made application for letters patent for said invention and duly complied in all respects with the then existing acts of Congress; that said Kenna assigned one-half of said invention to one Reuben A. Hitchcock; that said assignment was duly recorded; that on the 24th day of February, in the year 1880, letters patent of the United States numbered 224,923, for the said invention or discovery, were duly executed and delivered to said Kenna and Hitchcock, granting to them, their heirs or assigns, for the term of seventeen years from the 24th day of February, 1880, the exclusive right to make, use, and vend said invention throughout the United States and the territories thereof; all which by said letters patent and assignment or by duly certified copies thereof, now in court produced and shown to your honors, will more fully appear.

4 And your orators further show unto your honors that on or about the 21st day of May, 1884, by mesne assignments duly recorded in the United States Patent Office, said letters patent became vested in your orators; all which by said assignments, with the certificates of the recording thereof, or by duly certified copies

of said assignments and certificates, now in court produced and shown to your honors, will more fully appear.

And your orators further show unto your honors that the exclusive rights so vested in your orators are of great value and importance, and that the said patented invention has been and now is extensively used; that the demand therefor is very large, and that your orators are amply able to supply said demand, and but for the unlawful acts of the defendants would be in possession and enjoyment of the profits, benefits, and advantages arising from the supplying of said demand.

Yet the defendants, well knowing the premises and the rights secured to your orators as aforesaid by the letters patent numbered 224,923, dated February 24, 1880, and utterly disregarding the same, have, at Gardner, in said district, and at divers other places in the United States, in violation of the rights secured by said letters patent, and ever since the 21st day of May, 1884, unlawfully used the said patented invention and manufactured, used, and sold many articles, each embracing in its construction and mode of operation the invention described and claimed in said letters patent and material and substantial parts of the thing patented thereby, and still continue so to do, and the defendants have derived and are still deriving from such use of said invention large gains and profits, but to what amount your orators are ignorant and cannot set forth, and your orators are greatly damaged by such wrongful acts and doings of the defendants, to wit, in the sum of thirty thousand dollars.

And your orators farther show unto your honors that they will be subject to great and irreparable damage unless your honors will grant the relief hereby sought.

To the end, therefore, that the defendants may, upon oath, full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, according to the best of their knowledge, information, and belief;

And that the defendants and the attorneys, agents, servants, and workmen of the defendants may be enjoined perpetually, and also during the pendency of this suit, by writs of injunction to be issued by this honorable court, from making, using, or selling the invention patented in said letters patent 224,923 or any material and substantial part thereof claimed therein as new;

And that the defendants may be decreed to account for and pay over to your orators all the gains and profits that have accrued to them from using said invention or any material and substantial part thereof claimed in the said letters patent No. 224,923 as new, and that the damages sustained by your orators may be assessed and the defendants be decreed to pay over to your orators, in addition to such gains and profits, the damages your orators have sustained by such unlawful acts and doings;

And for such other and further relief as to your honors may seem meet—

May it please your honors to grant unto your orators not only the

writs of injunction conformable to the prayer of this bill, but also the writ of subpœna, directed to said Philander Derby, Arthur P. Derby, George Hodgman, and George W. Cann, commanding them to appear and answer to this bill of complaint and to do and receive what to your honors seem meet.

And your orators will ever pray.

THOMPSON, PERLEY & WAITE,
By J. E. MAYNADIER, *Their Solicitor.*

J. E. MAYNADIER, *Of Counsel.*

This cause entered as aforesaid was thence continued to the May term, A. D. 1886, when the following answer and replication were filed:

Answer. (*Filed May* 17, 1886.)

To the honorable the judges of the circuit court of the United States within and for the district of Massachusetts:

The joint and several answer of the defendants, Philander Derby, Arthur P. Derby, George Hodgman, and George W. Cann, all of Gardner, in said State, to the bill of complaint of Thompson, Perley and Waite, complainants.

These defendants, now and at all times hereafter reserving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, insufficiencies, and imperfections in the said bill of complaint contained, for answer thereto, or to so much thereof
6 as those defendants are advised it is material or necessary for them to make answer unto, answering, say:

I. That they are informed and believe that letters patent bearing date 24th day of February, A. D. 1880, No. 224,923, and purporting to grant to Joseph W. Kenna, assignor of one-half of his right to Reuben A. Hitchcock, for the term of seventeen years from the date thereof, the full and exclusive right and liberty of making, using, and vending to others to be used a certain alleged improvements in child's chair and carriage, were issued from the Patent Office of the United States, but they deny that said Kenna was the original and first inventor of the improvement described in said letters patent or any material part thereof; deny that the same had not been known or used by others before the alleged invention thereof by said Kenna; deny that said letters patent were granted according to law, and deny that by virtue of the grant thereof the said Kenna and Hitchcock ever became possessed of or entitled to any exclusive rights or privileges in respect to the things, improvements, or devices therein described and set forth.

II. And these defendants, further answering, say that they are not informed, save by said bill of complaint, as to whether said Kenna assigned or conveyed unto said Hitchcock one-half interest in said alleged invention and which assignment was duly recorded, or whether the complainants, by mesne assignments, duly recorded

in the United States Patent Office, of said letters patent, it became vested in them, and therefore leave the complainants to make such proof thereof as they may be advised is necessary and proper, but they deny that said Kenna or Hitchcock or the complainants ever had or became entitled to any exclusive right or property in and to the said alleged invention or improvement or any part thereof.

III. And these defendants, further answering, upon information and belief deny that they have at said Gardner, within the said district of Massachusetts, or elsewhere within the United States, since the 21st day of May, 1884, or at any other time, made, used, and vended or sold or are now making, using, and selling to others to be used any articles or child's chairs or carriages whatsoever containing substantially the alleged invention and improvement or any material — substantial part thereof set forth in and protected
7 by said letters patent No. 224,923; deny that they have done or caused to be done any act without right or in violation of the complainants' right or with intent to injure the complainants, and deny that they have injured or are infringing or give the complainants any reasonable ground to fear that they will infringe upon said letters patent No. 224,923 or upon such exclusive rights and privileges, if any, as are or may be lawfully and rightfully granted and secured thereby, and they deny all infringement of said letters patent No. 224,923.

IV. These defendants further deny, upon information and belief, that they or either of them have been duly notified or received from the complainants proper or due notice setting forth the alleged rights of the said complainants under said letters patent upon which this suit is brought save through the allegations made in the said bill of complaint or in what respect complainants' rights were or are infringed by these defendants by reason of their manufacturing, using, and selling child's chairs or carriages to the public.

V. These defendants on information and belief further deny that said complainants have heretofore or prior to this suit given sufficient and legal notice to the public that the child's chairs and carriages alleged to have been manufactured by them *was* patented, as is alleged by them, either by fixing thereon the word "patented," together with the day and year the said patent was granted, and otherwise giving due and proper notice to the public of such alleged fact, and these defendants pray all the advantages and benefits resulting therefrom, as provided for in sec. 4900 of the Revised Statutes of the United States, relating to patents for new and useful inventions, the said complainants not having duly notified these defendants or either of them of the infringement complained of, as provided by law, prior to the bringing of this suit.

VI. These defendants, further answering, aver that the child's chairs and carriages which they and each of them have heretofore manufactured, used, and sold and are now manufacturing and selling have been and are now lawfully and rightfully so manufactured and sold by license and authority under some or all of the following-named letters patent of the United States:

8 Reissue patent No. 10095, dated Jan'y 3, 1882, Emil Worch, assignor by mesne assignments to Lemuel A. Chichester, original patent dated March 26, 1872, for combined stool and chair;

Letters patent granted to Ward B. Carpenter Aug. 19, 1873, No. 141,918, for improvement in cribs;

Letters patent granted to Lemuel A. Chichester June 13, 1882, No. 259,368, for convertible child's chair;

Letters patent granted to Lemuel A. Chichester July 11, 1882, for convertible child's chair, No. 260,843; and

Letters patent granted to Frank F. Parker, assignor to Philander Derby, May 12, 1885, for child's chair, No. 317,668.

VII. And these defendants, further answering, upon information and belief aver that the alleged invention or substantial and material parts thereof described and claimed in said Kenna patent, 224,923, had been in public use or on sale in this country for more than two years before his application for a patent, and that therefore the patent is void and the alleged invention described therein free to the public.

VIII. And these defendants, further answering, upon information and belief aver that prior to the supposed or alleged invention of the said Kenna of the matters and things described and claimed in the said patents No. 224,923, sued on, the same things or material and substantial parts thereof had been known to and used by the following-named persons at the places named, viz:

Known and used by Lemuel A. Chichester, residing at Phœnicia, State of New York, at said Phœnicia and at New York city, in said State of New York.

Known and used by Edward P. Chichester, residing at Brooklyn, in the State of New York, at Phœnicia, in said State of New York, and also at said Brooklyn and at the city of New York, State of New York.

Known and used by John Blythe, residing at Phœnicia, in the State of New York, at said Phœnicia.

Known and used by Charles Zimmerman, residing at Phœnicia, in the State of New York, at said Phœnicia.

9 Known and used by Seth Heywood, residing at Gardner, in the State of Massachusetts, at said Gardner; also known and used by him in the city of New York, in the State of New York.

Known and used by Henry Heywood, residing at Gardner, in the State of Massachusetts, at said Gardner; also known and used by him in the city of New York, State of New York.

Known and used by Amos Morrill, residing in the city of New York, State of New York, at said city of New York; also known and used by him at Gardner, in the State of Massachusetts.

Known and used by Frederick Caulier, residing in Philadelphia, in the State of Pennsylvania, at said Philadelphia.

Known and used by James F. Harris and Edward D. Childs, both of Charlestown, in the State of Massachusetts, at said Charlestown.

Known and used by Jerome F. Downing, residing in Erie, State of Pennsylvania, at said Erie.

Known and used by Dexter Gleason, residing at Gardner, in the State of Massachusetts, at said Gardner and at Fitchburgh, in said State.

These defendants, further answering, on information and belief aver that prior to the supposed alleged invention of the said Kenna of the matters and things described and claimed in the said patent No. 224,923 the same things or substantial and material part or parts thereof had been described and set forth in the following letters patent of the United States, viz:

Letters patent granted to W. B. Carpenter Aug. 19, 1873, No. 141,918.

Letters patent granted Dexter Gleason, assignor to himself and Lather J. Brown, May 20, 1879, No. 215,601.

Letters patent granted to Frederick Caulier April 23, 1878, No. 202,788.

Letters patent granted to Franklin Chichester July 8, 1879, No. 217,341.

Letters patent granted Geo. H. Patten September 3, 1878, No. 207,621.

Letters patent granted to Geo. W. Swain July 15, 1879, No. 217,652.

Letters patent granted to James F. Harris and Edward D. Childs April 8, 1873, No. 137,610.

Letters patent granted to Franklin Chichester July 8, 1879, No. 217,341.

Letters patent granted Erastus S. French and Leonard Hunting, assignor, March 6, 1877, No. 188,120.

Letters patent granted to C. H. Barnes March 25, 1879, No. 213,610.

Letters patent granted to A. B. Stevens Oct. 7, 1879, No. 220,258.

IX. And these defendants, further answering, upon information and belief aver that the alleged invention and improvement or substantial and material parts thereof set forth and claimed as new in said letters patent No. 224,923, upon which this suit is brought, were before the alleged origination or discovery thereof by said J. W. Kenna described and illustrated in a printed publication, viz., in Heywood Bros. & Co.'s Illustrated Catalogue, printed Oct. 1, 1878, by Wilbur & Hastings, stationers and printers, 40 Fulton street, New York, N. Y., and special reference is had to page 8 of said publication and to the illustrations marked No. 292, known as the "pearl," shown in two positions side by side on the 8 page of said publication.

X. And these defendants, further answering, upon information and belief deny that the alleged invention patented as aforesaid has heretofore been in the exclusive possession and enjoyment of the complainants or their grantors, and deny but for the alleged infringements charged in the said bill the complainants would be in the undisturbed possession and enjoyment of said patent No. 224,923 or any rights or privileges granted or secured thereby; deny that

said complainants have derived large profits from said patented invention or would but for the acts of the defendants, as alleged in the bill of complaint; deny that the said patented invention is of great value or of any present value in the manufacture of child's chairs; deny that the demand for said patented invention is very large or that there is any demand therefor; deny that the complainants are using or selling said alleged patented invention or would but for the acts of these defendants complained of in said bill of complaint.

XI. And these defendants, further answering, on information and belief aver that the records of the United States Patent Office in the matter of said Joseph W. Kenna's application for said letters
11 patent No. 224,923 show that while said application for a patent was pending before the Commissioner of Patents said Kenna fully recognized and acknowledged that the state of the art was such that the only things, if any, new in his said application were some special devices or particular and limited combinations, and withdrew and cancelled most of his claims presented prior to the allowance of his said application by the Commissioner of Patents, as by duly certified copies of such record, here in court to be produced, will fully and at large appear.

XII. These defendants, further answering, for the reasons heretofore recited, submit that they ought not to be decreed to account for and pay over to the complainants any profits or damages whatsoever, nor to be restrained as in complainants' said bill of complaint is prayed, but, without admitting that any other matter contained in said bill of complaint material to be answered unto and not herein sufficiently answered is true to their knowledge and belief, submit that the complainants are not entitled to any relief whatsoever against them or either of them.

And they pray the same benefit and advantage from the facts and things or any part thereof which are herein set forth as if for the reason thereof the said bill had been demurred to when a demurrer would have been proper and the same benefit and advantage thereof as if they had been specially pleaded to said bill of complaint; all which matters and things those defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

PHILANDER DERBY.
ARTHUR P. DERBY.
GEORGE HODGMAN.
GEO. W. CANN.

THOS. H. DODGE,
Solicitor and of Counsel for Defendants.

12 UNITED STATES OF AMERICA, }
District of Massachusetts, County of Worcester, } *ss:*

On this 15th day of May, A. D. 1886, before me personally appeared Philander Derby, Arthur P. Derby, George Hodgeman, and George W. Cann and severally made oath that they have heard read the foregoing answer by them subscribed, and that the same is true

except as to those matters therein stated on information and belief, and as to those they believe it to be true.

Before me—
[SEAL.] JAMES A. STYLES,
Notary Public.

Replication. (*Filed July* 17, 1886.)

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendants is untrue and insufficient to be replied unto by these repliants; without this, that any other matter or thing in the answer contained material or effectual in the law to be answered unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their bill of complaint they have already prayed.

By their solicitor, J. E. MAYNADIER.

13 This cause was thence continued from term to term to the May term, A. D. 1887, when publication of the testimony was had and the cause was set down for hearing and fully heard by the court, and was thence continued, under advisement, to the October term, A. D. 1887, when the opinion of the court was announced and the following decree was entered:

Decree for Perpetual Injunction and for Reference to a Master, December 3, 1887.

This cause came on to be further heard at this term upon the pleadings and proofs and was argued by counsel for the respective parties; and thereupon, upon consideration thereof, to wit, December 3, 1887, it is ordered, adjudged, and decreed as follows, viz: That the letters patent referred to in the complainants' bill, being letters patent of the United States granted unto Joseph W. Kenna, No. 224,923, dated February 24, 1880, is a good and valid patent, and that the said Joseph W. Kenna was the original and first inventor of the improvement described and claimed therein, and that the said defendants have, by the manufacture and sale of chairs made under the Chichester patents, No. 259,368, dated June 13th, 1882, and No. 260,843, dated July 11th, 1882, infringed upon the second claim of said Kenna patent and upon the exclusive rights of the complainants under the same, but in the manufacture and sale of chairs made under the Parker patent, No. 317,668, dated May 12, 1885, have not infringed.

And it is further ordered, adjudged, and decreed that the com-

plainants recover of the defendants the profits which they
14 have received or made or which have accrued to them from said infringement by the manufacture, use, or sale of the improvement described and secured by the second claim of said letters patent at any and all times since the twenty-first day of May, 1884, and, in addition thereto, the damage which the complainants have sustained thereby.

And it is further ordered, adjudged, and decreed that it be referred to Henry L. Hallett, Esquire, a master of this court, to take and report to the court an account of the profits which the said defendants have received or which have arisen or accrued to them from the infringement of the second claim of the patented invention by unlawfully making, using, or vending chairs made under said Chichester patents, and to ascertain and report the damages, if any, in addition to the profits, which the complainants have sustained thereby since the twenty-first day of May, A. D. 1884.

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued against the defendants, according to the prayer of the bill.

And it is further ordered, adjudged, and decreed that the complainants recover of the defendants the costs of suit.

By the court:

ALEX. H. TROWBRIDGE,
Deputy Clerk.

A petition for a rehearing of this cause was filed by complainants at this term, and the same, being heard by the court, was denied. This cause was thence continued to the May term, A. D. 1888, when the following report of the master was filed:

15 *Master's Report.* (*Filed June* 16, 1888.)

To the honorable the judges of said circuit court:

The foregoing case was referred to me as master by a decree dated Dec. 3, 1887, requiring me to take and report to the court an account of the profits which the said defendants have received or which have risen or accrued to them from the infringement of the second claim of the patented invention by unlawfully making, using, or vending chairs under the Chichester patents, and to ascertain and report the damages, if any, in addition to the profits, which the complainants have sustained thereby since the twenty-first day of May, A. D. 1884.

On the 20th of April, A. D. 1888, J. E. Maynadier, Esq., representing the complainants, and M. A. Kursheedt, representing the defendants, came before me and submitted the following agreement or stipulation, signed by them:

Agreement.

It is agreed that the defendants have made and sold forty-six (46) dozen chairs like Exhibits Defendants' Chairs 1 and 2, and also

that the master report the damages from such infringement at the rate of seven dollars ($7) per dozen, making three hundred and twenty-two dollars ($322) damages from said infringement.

It is also agreed that thirty-seven (37) dozen chairs similar to Exhibits A and B have been made by the defendants. These chairs, the defendants claim, are not covered by the decree of
16 the court. If the master shall find that, in his opinion, they do come within the decree, then it is agreed that for these thirty-seven (37) dozen the master shall also report the damages at seven dollars ($7) per dozen.

(Signed) J. E. MAYNADIER,
For Complainants.
M. A. KURSHEEDT,
For Defendants.

By the terms of this agreement the only question left for the master's decision is whether the thirty-seven (37) dozen chairs made by defendants similar to Exhibits A and B are to be accounted for as infringing chairs.

These chairs are similar in all respects to Exhibits Defendants' Chairs 1 and 2, except that the spring catch differs slightly. Instead of the spring catch shown in Exhibits 1 and 2, the chair seats in Exhibits A and B are so constructed that the bail is forced under the chair seat and is there caught and held securely by spring pressure, and this is the same in substance as is found in Exhibits 1 and 2 and in the complainants' patent. I therefore find that the thirty-seven (37) dozen chairs built like Exhibits A and B do infringe and should be accounted for, and that the complainants are entitled to recover as damages five hundred and eighty-one dollars ($581), the same being seven dollars ($7) per dozen on eighty-three (83) dozen chairs.

Respectfully submitted.

HENRY L. HALLETT, *Master.*

May 7, 1888, I submitted the foregoing as a first draft report to counsel for the respective parties herein.

May 15, 1888, the defendants filed with me the following paper:

Defendants' Objections to Draft Report. (*Filed with Master May* 15, 1888.)

The defendants respectfully object and except to the master's proposed report in this suit, their ground of objection and
17 exception being that he finds the chairs similar to Exhibits A and B infringe the complainants' patent and should be accounted for, the fact being that such chairs were particularly disclaimed by complainants' assignor and not claimed as his invention, and therefore are not an infringement of said letters patent; all of which appears clearly from the proofs taken at the final hearing to which the master's attention has been directed.

The defendants further object and except to said report on the

ground that the master finds that the complainants are entitled to recover as damages $581, the same being $7 per dozen on eighty-three dozen chairs.

The defendants request the master to state in his report that there was used before him on the reference the depositions and exhibits used on the final hearing herein, and also the decree and the opinion of the court herein, as well as the two exhibits, A and B, and that no oral evidence was taken before him on the reference.

THOS. H. DODGE,
Defendants' Solicitor.

As to the first objection of the defendants, it seems plain to the master that neither Exhibits Chairs A and B nor Exhibits Chairs 1 and 2 are disclaimed.

This finding disposes of the second objection.

There was used before me on the reference the depositions and exhibits used on the final hearing in this case, and also the decree and opinion of the court herein, as well as the two exhibits, A and B, and no oral evidence was taken before me on the reference.

A brief was filed before me by the defendants, assuming that the chairs A and B contained but three of the four elements of the combination. After carefully considering the same I see no reason to alter my previous finding that chairs A and B do contain the four elements.

Respectfully submitted.

HENRY L. HALLETT, *Master.*

18 At the said May term, A. D. 1888, the following exceptions were filed:

Defendants' Exceptions to Master's Report. (*Filed Sept.* 27, 1888.)

And now come the defendants, Philander Derby, Arthur P. Derby, George Hodgman, and George W. Cann, and submit to the court for its determination the following exceptions to the report of the master, filed herein June 16, 1888, as follows, to wit:

First exception. These defendants respectfully except to the master's report, and as ground of objection and exception state that the said master errs in finding that chairs constructed similar to Exhibits A and B and made by these defendants are covered by the interlocutory decree of this honorable court as entered in this cause and are infringements of complainants' letters patent No. 224,923, whereas the master should have found that chairs of the construction like Exhibits A and B are disclaimed in said letters patent and in the application therefor, and should therefore not be accounted for by these defendants.

Second exception. And these defendants further except to the said master's report on the ground that the master finds that the complainants are entitled to recover as damages the sum of five hundred and eighty-one dollars, the same being seven dollars per dozen on eighty-three dozen chairs, whereas the master should have found that the defendants are liable under the interlocutory decree for

forty-six dozen chairs like Exhibits Defendants' Chairs 1 and 2, at the rate of seven dollars per dozen, making in all three hun-
19 dred and twenty-two dollars damages from said alleged infringement, and should not have included in his said report thirty-seven dozen chairs constructed similar to Exhibits A and B.

Respectfully submitted.

PHILANDER DERBY,
ARTHUR P. DERBY,
GEORGE HODGMAN,
GEORGE W. CANN, *Defendants.*
BRIESEN, STEELE & KNAUTH,
Of Counsel for Def'ts.

Dated Sept. 26, 1888.

This cause was thence continued to this present October term, when the same comes on to be heard and is fully heard by the court on the foregoing exceptions to the master's report.

On the sixteenth day of January, A. D. 1889, the opinion of the court that defendants' exceptions to the master's report should be overruled is announced; and thereupon it is ordered that the said exceptions be, and the same are hereby, overruled.

On the eighth day of February, A. D. 1889, the following final decree is entered:

Final Decree. (*February* 8, 1889.)

COLT, *J.:*

The master's report made in pursuance of the interlocutory decree in this cause having been duly filed on the 16th day of June, 1888, which said master's report finds five hundred and eighty-one dollars ($581) as recoverable damages, and the defendants having filed exceptions to the draft of said report on the 15th day of
20 May, 1888, and such exceptions having come on to be heard by this court, and Mr. Arthur v. Briesen having been heard in support of such exceptions, and Mr. J. E. Maynadier having been heard in opposition thereto:

Now, therefore, upon consideration thereof and on motion of J. E. Maynadier, Esq., solicitor for the complainants, it is ordered, adjudged, and decreed that the said master's report be, and the same hereby is, in all things confirmed, and that the complainants, Daniel L. Thompson, Charles A. Perley, and Gilman Waite, do recover of the defendants, Philander Derby, Arthur P. Derby, George Hodgman, and George W. Cann, the sum of five hundred and eighty-one dollars ($581), damages, together with the sum of ten hundred and sixty-one dollars twenty-six cents, costs of suit, and that said defendants pay said sums to the complainants, and that the complainants have execution and proper process of this court for the collection thereof.

By the court:

ALEX. H. TROWBRIDGE,
Deputy Clerk.

Before complainants' costs were inserted in the foregoing decree the clerk of this court taxed the same in the said sum of $1,061.26. In these costs were included the following witness fees:

To A. B. Stevens, New Bridge, N. J.:		
Travel, New Bridge, N. J., to Boston, Mass., 293 miles one way, 2 travels, 586 miles, one way	$58 60	
Attendance, 3 days	4 50	
		63 10
21		
To J. W. Kenna, La Grange, Ill.:		
Travel, La Grange, Ill., to Boston, Mass., 1,358 miles, one way	$135 80	
Attendance, 1 day	1 50	
		137 30
To H. Vanderploeg, Chicago, Ill.:		
Travel, Chicago, Ill., to Boston, Mass., 1,108 miles, one way	110 80	
Attendance, 1 day	1 50	
		112 30
To E. J. Reed, Chicago, Ill.:		
Travel, Chicago, Ill., to Boston, Mass., 1,108 miles, one way	110 80	
Attendance, 1 day	1 50	
		112 30

The following is the report of the clerk of this court on the taxation of costs before him:

Clerk's Report on Taxation of Costs.

Parties appeared before the clerk by counsel. Defendants' counsel, Mr. Howe, objected to the travelling fees of Stevens, Kenna, Vanderploeg, and Reed on the ground that witness fees for travel cannot be taxed in excess of 100 miles if the witness lives outside the State of Massachusetts. No objection is made to the number of miles if more than 100 miles can be properly taxed. I have overruled defendants' objection on the authority of U. S. *v.* Sanborn, 28 Federal Reporter, 299, and tax complainants' costs, as above, in the sum of $1,061.26.

Respectfully submitted.

JOHN G. STETSON, *Clerk.*

February 7, 1889.

22 *Order of Court and Claim of Appeal.*

The parties being heard by their counsel before the court upon the foregoing report of the clerk, the objections of the defendants thereto are overruled and the taxation by the clerk is affirmed by the court.

At a hearing before the court on the question of costs the defendants claimed that full costs should not be taxed against the defendants upon the ground that the complainants were defeated in their contention that the chairs which the defendants made under the Parker patent infringed the Kenna patent in suit, and that much of the testimony in the cause relates to this contention, but the court decided that full costs should be taxed in favor of the complainants.

From the decree of this court entered on the eighth day of February, A. D. 1889, the defendants claim an appeal to the Supreme Court of the United States, and give good and sufficient security that they will prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, and said appeal is allowed.

A true record.
Attest: JOHN G. STETSON, *Clerk.*

23 The following is the evidence used at the hearing of said cause before said circuit court:

Evidence for Complainants,

Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before me, William A. Copeland, special examiner.

BOSTON, *Aug.* 25, 1886.

Present: J. E. Maynadier, Esq., of counsel for complainants; Thos. H. Dodge, Esq., of counsel for defendants.

Deposition of Asher B. Stevens.

Direct examination by J. E. MAYNADIER, Esq., of counsel for complainants:

Int. 1. What is your name, age, residence, and occupation?

Ans. Asher B. Stevens; 50; New Bridge, New Jersey; my occupation is connected chiefly with the chair business and getting up inventions for chairs.

Int. 2. How long have you been connected with the chair business and what knowledge have you of patents issued in this country and foreign countries relating to chairs?

Ans. I have been in the chair business eleven or twelve years, and I am considerably acquainted with the art, especially with patents that have been issued for children's chairs, convertible chairs, and carriages, upon rocking chairs and tilting chairs.

24 Int. 3. Are you familiar with letters patent No. 224,923, dated Feb. 24, 1880, the original of which is now shown you, and do you understand the construction and operation of the thing described in it?

Ans. I am familiar with it and I understand the construction and operation of the chair.

Int. 4. So far as you know or have any reason to believe, who is the original and first inventor of the combination of the three frames marked A, B, and E and the lock marked F described and showin the Kenna patent?

(Objected to for the reason that it does not specify either combination claimed in the patent; and, further, that the question calls for the opinion of the witness as to who is the inventor.)

Ans. J. W. Kenna, of Chicago.

Int. 5. Are you familiar with the three patents, No. 259,368, to L. A. Chichester, dated June 13, 1882; No. 260,843, to L. A. Chichester, dated July 11, 1882; No. 317,668, to F. F. Parker, dated May 12, 1885? If so, please state whether the things described in those three patents are substantially the same or not as the thing described in the Kenna patent in suit, giving your reasons for any opinion you may express.

(Patent Office copies of the four patents referred to in the question are now put in evidence and marked Complainants' Exhibits Kenna Patent in Suit, Chichester Patent 259,368, Chichester Patent 260,843, and Parker Patent 317,668, W. A. C., sp'l ex'r.)

Ans. I am somewhat familiar with the patents referred to. I consider that the patents to Chichester and to Parker embody the elements of the combination shown and described in the Kenna patent referred to. Looking at the Chichester patent 259,368, I see there in the frames F A B the frame B referred to in the Kenna patent, and in G G I the frame referred to in the Kenna patent as the frame A, and in I I the frame referred to in the Kenna patent as the frame E.

They are also combined together. The frames G G I are combined with the frame F A B at the lower corner in the same manner as in the Kenna patent, the former forming a part of the support for the chair frame, as specified in the Kenna patent, and supplemented by the frame I, which also completes the support for the chair seat in its upright position, and is retained in that position by the spring catch *b*, which in the Kenna patent is designated F.

In patent No. 260,843, also to Chichester, we see there again the same elements combined; the main frame A B C, the supporting frame I I J and its supplement, the frame K, pivoted together in the same manner and held together by the spring catch *f* and being to all intents and purposes exactly the same combination.

In the Parker patent we observe again the same elements combined in the same manner; the chair frame A 36, the A-shaped supporting frame D E, and the supplemental supporting frame H, combined with the yielding support to retain it in position at *t*, *h*, and J, being also substantially the same combination.

Int. 6. On hearing your answer read by the magistrate it seems to me that either he or you have made a mistake in the lettering of the supporting frame of the patent 259,368, for in the answer it is

lettered G G I. Please look again at the Chichester patent and state what the correct lettering of the frame is in that patent.

Ans. The correct lettering of the supporting frame in that patent is G G H.

Int. 7. Please look at the chairs now shown you, marked Complainants' Exhibits Complainants' Chair and Defendants' Chair 1 and Defendants' Chair 2, and state how they resemble or differ in substance from the chair described in the Kenna patent in suit, giving your reasons.

(The chairs are now put in evidence and marked as above.)

(Counsel for defendants objects to Compl'nts' Exhibit Complainants' Chair being offered in evidence as a representation of the chair described in the patent upon which this suit is brought.)

(Complainants' counsel states that the chair is offered in evidence simply as a sample of the chairs made for the market by the complainant under the patent in suit.)

Ans. So far as the inventions in controversy is concerned, I can see no difference between the three chairs. In the Compl'nts' Exhibit Complainants' Chair we see there the chair frame marked B in the Kenna patent, the supporting frame A and its supplemental supporting frame E, and the spring catch or yielding support to retain that frame in its proper position for a high chair. In the Compl'nts' Exhibit Defendants' Chair No. 1 we observe again the chair
frame B, the supporting frame A, pivoted together as described
26 in the Kenna patent, and the supplemental supporting frame
to retain that frame in position, being the combination in question precisely as described and claimed in the Kenna patent.

Also in Compl'nts' Exhibit Defendants' Chair No. 2 we observe the same features again: the chair frame B, the supporting frame A, and the supplemental yielding frame that holds it in place, so much so that the description and second claim of the Kenna patent is exactly adapted to it.

(Defendants' counsel objects to all that portion of the answer of the witness which refers to the "invention in controversy" and "the combination in question," since it has not appeared as yet from the evidence what the "invention in controversy" is and what "the combination in question" is.)

Int. 8. I have prepared tags bearing the letters A, B, E, and F, and with the initials of the magistrate. Will you please attach those tags to the parts of the three chairs which you believe to be the same as the parts which are designated by those letters in the Kenna patent in suit.

Ans. I have done so.

Int. 9. Please examine the models now shown you, marked Complainants' Exhibits Model 1, Model 2, and Model 3, and state whether the parts A, B, E, and F of the Kenna patent are in either of those models; and, if so, in which, and mark any parts which in your opinion are the same as the parts A, B, E, and F of the Kenna

patent with the same letter by which that part is designated in that patent.

(The models are now put in evidence and marked as above.)

Ans. I have examined the models and I find the parts designated A, B, E, and F in the Kenna patent to be in all of the models.

In Compl'nts' Exhibits Model 3 there seems to be two of the parts, E and F, the parts F being of metal; for want of an implement to do so I am unable to mark, but they are the catches or supports to hold the parts E in their proper position to support the seat as a high chair.

In this model, Compl'nts' Exhibit Model 3, there are two forms, as I said before, of the parts E and F, one of them being of this form, which is almost an exact representation of the same part in the Kenna chair, the other being the same thing in effect except that it is inverted and the spring catch or yielding support attached to the lower portion of the support A, and I have designated that by the letters E and F on the sides.

26a

Int. 10. Please look at the chair now shown you (now put in evidence and marked Complainants' Exhibit Defendants' Chair 3, W. A. C., sp'l ex'r) and state whether it has the four parts A, B, E, and F described in the Kenna patent; and, if so, please tag those parts with the tags such as you used on Exhibits Defendants' Chair 1 and Defendants' Chair 2.

Ans. It has those four parts, in my opinion, and I have tagged them as requested.

Cross-examination by THOMAS H. DODGE, Esq., of counsel for defendants:

Cross-int. 11. What did you first do in the chair business?

Ans. I made an invalid chair, I believe, was the first chair I ever worked at. It was to aid a person that was paralyzed in the mines of California for getting in and out of a wagon; but I never applied for any patent on it.

Cross-int. 12. Give the year and month as near as you can.

Ans. I should have to look it up a little, it was so long ago. I should think it was somewhere from 1866 to 1870; 1868, I should think, as near as anything, but I wasn't in the chair business at all.

Cross-int. 13. Was that chair used?

Ans. I think it was; yes, sir.

Cross-int. 14. Did it have two frames hinged together?

Ans. No, sir.

Cross-int. 15. Look at Compl'nts' Exhibit Complainants' Chair and state when you first had knowledge of the chair with two frames, the upper frame being hinged to the lower frame at its front lower corners and adapted to be used as a high or low chair, as occasion required.

Ans. I should think that I first had knowledge of such a chair in 1880—spring, I think it was, in 1880.

Cross-int. 16. How did you happen to have such knowledge?

Ans. I made such a chair myself and afterwards secured the patent upon it.

27 Cross-int. 17. How did that chair differ from the exhibit chair to which you have had your attention called?

Ans. I did not have a chair in which the base was connected together rigidly by means of stretchers. They were linked together, and, the more I think of it, it was not a chair with a rigid base like this and pivoted to the front corners, because as it unfolded to make the low chair the back legs became the handle by which the chair was propelled as a carriage.

Cross-int. 18. When did you first have knowledge of a chair having a rigid base, with a seat frame hinged thereto and a bail to hold the seat frame up, similar to the chair to which I have called your attention?

Ans. When I first saw Mr. Kenna's patent, or a publication of it in one of the trade journals or in the Official Gazette of the Patent Office, somewhere about the year 1880. It was very shortly after the date of the Kenna patent, upon which this suit is brought.

(This answer is with reference to a chair having these features spoken of and in which the base turned from a perpendicular to a horizontal position to make the conversion from the chair to the carriage.)

Cross-int. 19. Your answer necessitates still another question. Now, will you tell me when you first had knowledge of a chair constructed with two frames, the lower front corners of the chair frame being hinged to the front upper corners of the lower frame, and adapted to be used as a high or low chair, with a swinging device in the rear for supporting the chair frame in its elevated position?

Ans. When I made the modification referred to I had in mind the chair which I patented in 1878 or 1879 and was gotten up previous to that; but that lacked the feature of being pivoted at the front lower corner of the frame. The base was always upright and the two parts of the chair were connected by means of a link that allowed the top part to swing down into the other.

Cross-int. 20. When did you get this chair up which you have referred to in your last answer?

Ans. I conceived it in the year 1876 and made a model of one side—a working side. A handle was pivoted to this upright base and fell under the seat to assist in the support of the chair, as in a high chair.

27*a* Cross-int 21. Same as in the chair to which I have called your attention?

Ans. Very similar, sir.

Cross-int. 22. Was there any substantial difference between the device for supporting the chair frame in that and what is shown in Compl'nts' Exhibit Complainants' Chair Frame? And, if yea, state just what difference.

Ans. There was a marked difference, in that the support for the chair seat in the high position at the front side was the link which

stood perpendicular or nearly so to the base, and that link also bore the weight of the chair seat or the front portion of it, when in the lowered position and the lower front corner of the chair frame was not pivoted to the upper front corners of the base frame.

The rear support was substantially the same as in Compl'nts' Exhibit Complainants' Chair, when the chair was in a high position, but not in the lowered position.

As I think of it more I want to modify it still more. The supporting frame E in the Complainants' Exhibit Complainants' Chair is pivoted to the upright base, but this chair of mine differed, in that this frame E was pivoted to links also, and allowed the frame E or supporting frame to move out and under to form rockers upon which the chair rocked.

Cross-int. 23. Did you secure a patent for this chair?

Ans. I think I did; yes, sir. The chair referred to is that patented to me Oct. 7, 1879, No. 220,258.

Cross-int. 24. When did you first make a chair of this description?

Ans. I think I first made the complete chair in the year 1878.

Cross-int. 25. Did you ever make a chair resembling Comp'nts" Exhibit Complainants' Chair; if yea, when first?

Ans. Yes, sir; I made the chair, which was afterwards patented to me, which had a similar appearance to this chair when in an upright position. I think it was in the year 1880 or in the fall of 1879. It was either in the fall of 1879 or in the year 1880. It was the chair patented to me, dated June 22, 1880, No. 229,061.

Cross-int. 26. Try and fix the date when you made this chair last referred to, and state when you made parts of it so as to illustrate its construction.

28 Ans. I, to the best of my recollection, made the chair in August, 1879. The parts were made just previous to that, I believe.

Cross-int. 27. You secured other patents in 1880, did you not, for chairs?

Ans. I see by referring to the Gazette here that I had a patent granted to me Aug. 3, 1880, No. 230,671, and also one dated Aug. 10, 1880, No. 230,970; also one dated Aug. 31, 1880, No. 231,689.

Cross-int. 28. Please state when you first made chairs like those patented in 1880, to which you have referred.

Ans. I can't answer these questions intelligently without having a chance to look them up. I think I made a sample of the chair patented Aug. 3, 1880, in the fall of 1879, and, to the best of my recollection, these other two models patented in that year were made at the same time, but we didn't apply for patents on them until shortly after. I know that at one time I took samples of chairs up to Baldwinsville, and I think those are the three. I answer these to the best of my recollection. Of course, I haven't looked those matters up.

Cross-int. 29. In your answer to cross-int. 20 you say you "conceived" it in the year 1876, referring to a chair. How long after

that time was it before you made a chair like that described in your answer?

Ans. I made a model at that time of one side of the chair, and I made the full size chair in the fall of 1878, after entering into an arrangement with Thompson, Perley & Waite.

Cross-int. 30. Did Thompson, Perley & Waite make those chairs after that time?

Ans. I think the chair in that form was never manufactured to any large extent, and I know it wasn't.

Cross-int. 31. Was it in a modified form?

Ans. Yes, sir; I think that what we called our diamond chair was a modified form of that one.

Cross-int. 32. How did that differ from Compl'nts' Exhibit Complainants' Chair so far as relates to the supporting of the chair frame in its elevated position and hinging the same to the base frame?

Ans. That chair, so far as those two features were concerned, was very similar to this, but it was manufactured and patented after this chair was patented.

28a Cross-int. 33. You mean, I suppose, that your chair was manufactured and patented after the date of the Kenna patent upon which this suit is brought. Is this correct?

Ans. I think that is correct. At the time Kenna's patent was issued I thought that I was ahead of him, but his filing—the date was, I think, ahead of the date at which I conceived this diamond chair. I remember that on investigating the subject with Mr. Gregory I was disappointed at finding it so.

Cross-int. 34. Then at that time, the date of the granting of the Kenna patent, you believed that Kenna had patented what belonged to you, did you not?

Ans. I was in doubt about it, and more especially so from the fact that Mr. Kenna had adopted my way of attaching the wheels to the base instead of following his own way, in which the wheels were attached to the chair frame. I conceive that I ought to have had a claim in which the front leg frame formed a running gear for the carriage.

Cross-int. 35. You took pains to examine Mr. Kenna's claims soon after the patent issued, did you not?

Ans. I have no doubt but what I did, and I came to the conclusion from that investigation that Kenna was entitled to them, and advised Thompson, Perley & Waite to spare no reasonable means to secure possession of it.

Cross-int. 36. Why did you give this advice to Thompson, Perley & Waite? What danger did you apprehend?

Ans. I was anxious that they should secure all valuable patents in the child's chair line or those that I thought were valuable.

Cross-int. 37. Did you believe at that time, after examining the Kenna patent, that your chair infringed the claims granted in said patent?

Ans. I did not, but after my diamond chair became known Chichester cut his chair in two, and seeing the value of this shortening up the base and other parties started into this line of chairs for

marketable purposes and I thought that the Kenna patent contained claims that would secure all that was valuable in that class of chairs, and by its adoption the sale of that class of chairs became increased largely.

29 Cross-int. 38. You appear to be determined not to confine your answers to the interrogatories put, and consequently greatly prolong your examination. Will you state what you advised with Mr. Gregory about and where you made an examination of the date of filing the application for the Kenna patent, if it did not conflict with your invention which you were about to patent?

Ans. I was anxious to secure the Kenna patent and I thought that my patent had claims in it or two of my patents should have had claims in that should cover portions of the chair as manufactured by Mr. Kenna. I thought that he had adopted my plan, as I said before, of applying the wheels. I thought also that my patent of Oct. 7, 1879, had claims in them which covered the use of a convertible handle and support for the chair, and I was anxious to have proceedings brought against him to stop his manufacture, and, if possible, purchase his patent.

Cross-int. 39. Your patent of Oct. 7, 1879, you say, had links for supporting the front of the chair frame. Please state whether, in your opinion, a link support is substantially different from a pivot support.

Ans. It is substantially different, as by means of the links the chair was permitted to move out and down in a semicircular form, when if the chair frame and base frame had been pivoted together this movement would have been impossible. What I mean by that is that the chair in moving from the higher to a lower position moved in the arc of a circle—a movement essential in that form of chair, as the base was always upright and consequently could not be turned up out of the way.

Cross-int. 40. Then from the examination which you and Mr. Gregory made you became fully satisfied, did you not, that the filing of Mr. Kenna's application for the patent upon which this suit was brought was prior to the time when you conceived of the invention of the chair referred to in your answer to the 29th cross-int.?

Ans. I did not become so convinced, but I did become convinced that Kenna's application was prior to the invention by me of what we called the diamond chair, which we put upon the market.

Cross-int. 41. Then you now testify, do you, after your memory has been refreshed, that you never conceived of a chair hav-

29*a* ing the elements shown in Compl'nts' Exhibit Complainants' Chair until after the filing of the Kenna application for the patent upon which this suit was brought, which was filed July 28, 1879?

Ans. I do not now claim nor have I ever claimed to have invented a chair which had all the elements of the Kenna application.

(Answer objected to and question repeated.)

Cross-int. 42. (Question re-read.)

Ans. I never conceived of it prior to the filing of the application by Kenna.

(Adjourned.)

BOSTON, *Aug.* 26, 1886.

Cross-int. 43. You have stated in your direct examination that you believe Mr. Kenna to be the inventor of a certain chair or invention. Did you reach such a conclusion from any knowledge or information from Mr. Kenna himself?

Ans. I had that conclusion confirmed by an interview with Mr. Kenna.

Cross-int. 44. When and where was that interview, and did you have more than one interview? And, if yea, state all.

Ans. The first interview, I believe, was in the summer of 1884, at Chicago, and I have had several other interviews. I can't tell all; some, I think, at New York and Washington. These others didn't refer to this chair or invention at all, nor to the patent in suit.

Cross-int. 45. What knowledge did you derive from Mr. Kenna which confirmed your conclusion that the date of his invention was prior to yours?

Ans. He told me he had made a sample of his invention a considerable time before he applied for his patent. I think he showed me a model which he had made, which dated back and confirmed the opinion which I had previously formed.

Cross-int. 46. What was the date of the model?

Ans. I think it dated back to the latter part of the year 1878—fall, if I remember right.

Cross-int. 47. Can't you recollect with sufficient distinctness so as to be a little more positive about the date?

Ans. I cannot. I don't think he gave me the positive date of it—accurate.

30 Cross-int. 48. Did he show you a full size chair; and, if yea, when was that made?

Ans. He did not show me a full size chair, and I don't know when he made his first full size chair.

Cross-int. 49. Did you ever see a full size Kenna chair which was made by him?

Ans. I have seen those that purported to be made by him or by him and the firm with which he was associated—Ford, Johnson & Co., I think it was. I think that this exhibit, Compl'nts' Exhibit Complainants' Chair, is one of them.

Cross-int. 50. Have you as an expert carefully examined the Kenna patent in suit?

Ans. I have examined it carefully.

Cross-int. 51. And as an expert you testify, do you, that the chair Compl'nts' Exhibit Complainants' Chair correctly represents the construction and mode of operation of the chair described and represented in said Kenna patent?

Ans. It correctly represents the chair described and claimed in the second claim of Kenna's patent, although it is not a full representation of the chair as shown and described in that patent.

Cross-int. 52. Are there two chairs described and claimed in the Kenna patent in suit?

Ans. There are not two chairs described and claimed in that patent.

Cross-int. 53. Then Compl'nts' Exhibit Complainants' Chair does not correctly represent the chair described in the specification and claimed in the first claim of the Kenna patent?

Ans. It does not.

Cross-int. 54. Does it correctly represent the chair described in the specification of the Kenna patent?

Ans. It does not. The specification contains features beyond what is shown in this exhibit chair, Compl'nts' Exhibit Complainants' Chair, and whose functions are filled by other devices in this chair.

Cross-int. 55. As an expert do you say that either of the chairs Compl'nts' Exhibits Defendants' Chair 1, Defendants' Chair 2, and Defendants' Chair 3 correctly represents the chair described in the Kenna specification in the patent in suit?

30*a* Ans. They are not full representations of the chair described in the specification and claimed in the Kenna patent in both claims.

Cross-int. 56. Then you do not find in either of these chairs the subject-matter described in the Kenna specification and embraced in the first claim thereof, do you?

Ans. Not literally.

Cross-int. 57. Do you figuratively?

Ans. The exact matter of the first claim does not appear in either of the chairs.

Cross-int. 58. The question is repeated.

Ans. I don't see it figuratively.

Cross-int. 59. Do yo- see it figuratively in the second claim of the Kenna patent?

Ans. I do; and literally.

Cross-int. 60. State why you do not see it figuratively or literally in the first claim of the Kenna patent.

Ans. One of the elements of the combination that makes up the first claim of the Kenna patent are the slotted bars employed for the purpose of preventing the chair from tipping over forward too far. Those bars do not appear literally in either of the four exhibits—the three—Compl'nts' Exhibit Complainants' Chair, Defendants' Chair 1, Defendants' Chair 2, and Defendants' Chair 3.

Cross-int. 61. Then that element of the combination covered by the first claim of the Kenna patent is wanting in these four exhibits, is it?

Ans. Literally it is wanting, its functions being filled by other devices in all of them.

Cross-int. 62. Did you ever see or have knowledge that a full size chair was ever made which correctly represents in all the parts the chair shown and described in the Kenna patent in suit?

Ans. I have.

Cross-int. 63. How many such chairs?

Ans. One.

Cross-int. 64. Where is that chair?

Ans. I think that it is at Baldwinsville.

Cross-int. 65. How long since you have seen it?

Ans. It was about six weeks ago.

Cross-int. 66. In whose possession was that chair at the time?

31 Ans. Thompson, Perley & Waite.

Cross-int. 67. Do you know when and where that chair was made?

Ans. It was made at their shop about that time. It was prepared as an exhibit, but it hasn't been brought.

Redirect examination by J. E. MAYNADIER, Esq., of counsel for complainants:

Int. 68. As to the invention described in the Kenna patent and referred to in the first claim thereof, please give your opinion as to whether it is embodied or not in one side of Compl'nts' Exhibit Model 3. If you think it is please affix the tag marked with G and the initials of the magistrate to the part that you believe corresponds with the part marked G in the Kenna patent in suit.

Ans. It is embodied in one side of that exhibit, and I have tagged it as requested.

Int. 69. You have testified that you believe the chair marked Compl'nts' Exhibit Complainants' Chair was made by Kenna or Ford, Johnson & Co., but I am informed that it was made by Thompson, Perley & Waite. Please reconsider this matter and state how the fact really is.

Ans. Who made that exact chair I have no knowledge, but that is as near as I can recollect of the form of the chair as made by Ford, Johnson & Co., of Chicago. I think Mr. Waite is mistaken about that chair being made by Thompson, Perley & Waite, but they may have made some chairs exactly like the Ford, Johnson & Co.'s chairs, this being one of them.

ASHER B. STEVENS.

Attest: WILLIAM A. COPELAND,
Special Examiner.

32 *Deposition of Gilman Waite.*

Direct examination by J. E. MAYNADIER, Esq., of counsel for complainants:

BOSTON, *Aug.* 25, 1886.

Int. 1. What is your name, age, residence, and occupation?

Ans. Gilman Waite; 54; Baldwinsville, Mass.; chair manufacturer.

Int. 2. Are you one of the complainants?

Ans. Yes, sir.

Int. 3. Please look at the chair now shown you—Compl'nts' Exhibit Complainants' Chair—and state what you know about the manufacture and sale of chairs of that description.

Ans. We manufacture this chair. Well, we have been manufact-

uring them for the last two or three years, more or less. I couldn't tell just how long—this particular chair. Chairs very similar to this, having the same combination, we have manufactured for perhaps the last eight or ten years, more or less. We manufacture the chair. It comes under the Kenna patent, so called, that has the seat frame B the same as this, the supporting frame A the same as this, the supplemental support E the same as this, and the catch F, I think it is.

Int. 4. When did you buy the Kenna patent, as near as you now recollect, and state whether you manufactured the Kenna chairs before you bought the patent or not?

Ans. Between two and three years, I should say, since we bought the Kenna patent. We did not manufacture this identical chair until after we bought the patent.

Int. 5. Of whose manufacture are the chairs now shown you, marked Compl'nts' Exhibit Defendants' Chair 1 and Defendants' Chair 2?

Ans. No. 1 is the Chichester—manufactured by Chichester; No. 2 by Philander Derby or by Derby & Sons.

Int. 6. State the substance of any conversation you may have had with Mr. Derby or with any of the defendants as to the chairs of which Defendants' Chair 1 and Defendants' Chair 2 are samples.

Ans. I called at Mr. Derby's office some time last winter and told Mr. Derby I had called in to talk with him about child's
33 chairs; that we claimed he was making a chair that infringed upon our patents, and he wanted to know what chair, and I spoke of the chair that we have here at the present time, Defendants' Chair No. 2. I told him this, Defendants' Chair No. 2, was one of the chairs that infringed upon our patents. He said that he thought he had never made more than ten or fifteen dozen and was not making any at the present time.

I told him that we claimed that it was a direct infringement, and we should want him to settle for what chairs he had made like No. 1 and No. 2.

The conversation was really mixed up with the two, so that it is difficult to sort out what was said about No. 1 from No. 2.

There wasn't much conversation about No. 1. I think I told him we should hold him responsible for what he sold like No. 1. Our talk was principally about No. 2.

(Noon recess.)

Int. 7. In your third answer you say, "Chairs very similar to this having the same combination, we have manufactured for perhaps the last eight or ten years, more or less." Please explain more fully what sort of chairs you mean by that.

Ans. I mean convertible high and low chairs—child's chairs. That is what I intended to convey.

Int. 8. About how many chairs have you manufactured under the Kenna patent?

Ans. I should think some two thousand a year.

Int. 9. After your conversation with Mr. Derby about the chairs

like Exhibits Defendants' Chair 1 and Defendants' Chair 2 did you have occasion to see him again? If so, about how soon after? And give the substance of what was said.

Ans. Some few weeks after I went down and took the Kenna patent with me, as I told him I would the first time, and explained to him where it infringed. I saw Mr. Derby, and, I think, his son-in-law, Mr. Cann. I explained to him the points where the infringement was. They said that they had stopped making them. I told them I wanted they should settle for what they had made and sold. Mr. Derby said if we had any demands to make against them we must make it legally. I told him if he didn't feel disposed to settle I suppose we should be obliged to take a legal course. That
34 was the sum and substance of our conversation. He said he had another chair that he was manufacturing. I told him that I had seen it, and Thompson, Perley & Waite claimed that it was as direct an infringement as that he had left off making. Then Mr. Derby made the remark that if we claimed that was an infringement, if we made any demands, we must make them legally.

Int. 10. Have you a sample of that third chair? If so, please produce it to be marked as a- exhibit in the case.

Ans. I have.

(The witness refers to the chair marked Compl'ts' Ex. Defendants' Chair 3.)

(Adjourned.)

BOSTON, *Aug.* 26, 1886.

Int. 11. How long have you been concerned in the manufacture and sale of chairs?

Ans. Some 14 years.

Int. 12. What is there in the three chairs marked Compl'ts' Exhibits Defendants' Chairs 1, 2, and 3 which you believe to be substantially the same as what is described in the Kenna patent in suit?

Ans. The chair frame B, the supporting frame A, and the supplementary support E.

Int. 13. What holds the supplemental support in place when the chair is used as a high chair?

Ans. The spring F.

Int. 14. Mr. Stevens has testified that the chair marked Exhibit Complainants' Chair was made by Ford, Johnson & Co. or Kenna, in his belief, while you have testified that it was made by Thompson, Perley & Waite. Please reconsider the matter and state what the fact really is.

Ans. I would like to correct that; and this is a chair that was made by Kenna or Ford, Johnson & Co.

Int. 15. Who made the small chairs marked Exhibits Models 1, 2, and 3, and what were they intended to show?

Ans. George May made them, with some other help that he had. He was one of our workmen. We made them for the purpose of

getting one-half of the Kenna chair and one-half of the Derby
35 chair in the same chair for the purpose of showing that they could be put in the different positions when they were together.

Int. 16. The latter part of your answer seems to me to relate to model 3 only. Please state why models 1 and 2 were made.

Ans. For the same purpose.

Int. 17. Does your firm make only one style of chair under the Kenna patent?

Ans. We make only one.

Int. 18. Which of the models 1, 2, or 3 is the nearest like that style?

Ans. No. 2 represents it the most closely.

Int. 19. What differences in detail, if any, are there between Exhibit Model 2 and the chairs made by your firm under the Kenna patent?

Ans. I really see no difference except the back leg is on the circle—practically it is the same thing. Ours is on a slant, but it is straight stock.

Int. 20. Why does the frame E in model 1 bear on the under side of the seat frame instead of on the under side of the stretcher, as in model 2?

Ans. It gives, makes a longer push-handle. It makes no difference in the operation of the chair which place you have it.

Cross-examination by THOMAS H. DODGE, Esq., of counsel for defendants:

Cross-int. 21. When did you commence to make chairs having the chair seat supported by a swinging bail, as shown in Compl'ts' Exhibit Complainants' Chair?

Ans. I should think two or three years. I can't give the exact date.

Cross-int. 22. Didn't you make a child's chair before that time?

Ans. Yes, sir.

Cross-int. 23. Was not that chair adapted to be used as a high and also as a low chair?

Ans. It was.

Cross-int. 24. How was the chair frame or seat supported when used as a high chair? Is there any chair among the exhibits in the room which represents that feature of construction? If yea, which one?

35*a* Ans. We manufacture one chair that we call the Diamond chair that looks like that, a portion of it. There is one in the room; it is marked Compl'nts' Exhibit Complainants' Chair.

The Diamond chair seat frame was supported by hinged legs in front. The back legs are also hinged to the seat.

Cross-int. 25. How long have you made a child's chair or any other kind of a chair in which the rear part of the seat frame is supported by a swinging bail device similar to Complainants' Exhibit Complainants' Chair?

Ans. I could not tell positively, but perhaps five years.

Cross-int. 26. Don't you know that you did before 1880?

Ans. I couldn't tell positively without looking it up. The park carriage chair I couldn't tell how long we have made.

Cross-int. 27. How is the park carriage chair made? How does it differ from the chair to which your attention has been called in the last interrogatory, so far as hinging of the seat frame to the base frame and supporting the seat frame when used in a high position?

Ans. It is a cross-legged chair, and the legs spread out when used as a low chair, and when used as a high chair the support comes up in the middle; the supplemental support comes up on the back side.

Cross-int. 28. Have you a cut of that chair?

Ans. It is shown and described in patent No. 247,847 to B. C. Odell, dated Oct. 4, 1881.

Cross-int. 29. When did you first commence the manufacture of this chair?

Ans. Perhaps three years ago.

Cross-int. 30. Who do you sell your child's chairs to, if you have any leading house as purchaser?

Ans. We sell more to Heywood Bros. & Co. and Ford, Johnson & Co., of Chicago, than to any one else, but we sell to other parties.

Cross-int. 31. Didn't you in your previous testimony get this park carriage chair confounded with some other chair; and, if yea, what was the name of that?

Ans. I think not.

Cross-int. 32. What kind of a chair is that called the Pearl chair? Have you ever made any and sold to Heywood Bros. & Co.?

Ans. I think we have sold them a chair that we called the Pearl chair.

36 Cross-int. 33. When did you first make that chair?

Ans. I could not tell without referring to the books. It is within a few years.

Cross-int. 34. Can you tell within five years when you commenced to make it?

Ans. I answered the question to the best of my recollection.

Cross-int. 35. Can you tell from your books when you first made it?

Ans. Yes, sir.

Cross-int. 36. Can you tell from your books when you first sold a chair of that description to Heywood Bros. & Co.?

Ans. I probably can.

Cross-int. 37. Do you have catalogues of your chairs, illustrating the forms of the chairs which you make?

Ans. We do.

Cross-int. 38. Have you one showing this Pearl chair?

A. I could not tell whether there is one in there or not. I presume there is, but I couldn't tell you.

Cross-int. 39. You have seen a cut of this Pearl chair which you make, in your office, have you not?

Ans. If we ever had one taken I have seen it there. I couldn't say positively that we ever had one taken.

Cross-int. 40. Do you make the chair at the present time?

Ans. I think we are not making the chair at the present time.

Cross-int. 41. Have you any on hand?

Ans. That I could not tell you.

Cross-int. 42. When did you last see one and where?

Ans. I couldn't tell you when I last saw one. The probabilities are that when I last saw one I saw it at our place.

Cross-int. 43. How many did you make of that style of chair?

Ans. I couldn't tell you.

Cross-int. 44. Did Heywood Bros. & Co. ever have a cut of it?

Ans. I couldn't tell you, sir.

Cross-int. 45. Did you ever use one in your house?

Ans. No, sir.

Cross-int. 46. How many different styles of child's chairs or carriages did you ever make that were adapted to be used either as a high or low chair or carriage?

36a Ans. I could not tell you accurately, but I should presume fifteen—perhaps more, perhaps less.

Cross-int. 47. How long ago did you commence making them?

Ans. I should think about 12 or 13 years ago.

Cross-int. 48. This Pearl chair that you have referred to was one of the first that you made, was it not?

Ans. I should think it was.

Cross-int. 49. When you return home will you look at your books and then note upon a sheet of paper the earliest date you find when you sold to Heywood Bros. & Co. the Pearl chair, to be marked as Defendants' Exhibit Pearl by the magistrate?

Ans. I will.

Cross-int. 50. Will you please look at the copy of the specification and drawing of the patent granted to F. Caulier April 23, 1878, No. 202,788, and state if the construction of the Pearl chair, so called, is illustrated and described by that patent, and do you own the patent?

Ans. We own so many patents that it is pretty hard to tell all the patents we own, and if I was going to describe the chair I should want the drawing or the chair here.

I should think there was very much similarity there.

Cross-int. 51. Don't you know that you own the Caulier patent referred to?

Ans. I think we do.

Cross-int. 52. You know you do, do you not?

Ans. I think we do.

Cross-int. 53. What stamp have you put on your chairs that you have sold Heywood Bros. or anybody else?

Ans. We put on the date and number of the patent.

Cross-int. 54. Did you put the date and number of the Caulier patent on?

Ans. We always give the stamp to our men and tell them to put it on. If there is any mistake it is their fault. Those are our orders always.

I am very positive that they were stamped.

Cross-int. 55. And it was stamped on what you call the Pearl chair, was it not?

Ans. If that was the number of the patent that it was made under it was stamped there.

37 Cross-int. 56. How many different styles of chairs did you exhibit at the Centennial in Philadelphia?

Ans. I think not but one.

Cross-int. 57. What was that style called?

Ans. The "44" chair.

Cross-int. 58. And you sold that chair to Heywood Bros. & Co., did you not?

Ans. I presume we did. I think that chair also went by the name of the "Gem carriage."

Cross-int. 59. And it would appear on Heywood Bros. & Co.'s catalogue as the "44" or "Gem carriage," would it not?

Ans. Yes, sir.

Cross-int. 60. Did the Pearl chair have a number; and, if yea, what number?

Ans. I don't remember that it had a number. I don't remember the number, if there was one.

Cross-int. 61. Look at an office copy from the Patent Office in the Kenna application and see if it refreshes your memory any.

(Counsel hands the witness a copy of the letter.)

Ans. I am not posted in Heywood's numbers. I supposed you were referring to our numbers, not Heywood's.

Cross-int. 62. You don't know personally, do you, that the defendants or either of them ever manufactured or sold chairs like the Complainants' Exhibits Defendants' Chairs 1, 2, or 3?

Ans. Yes, sir; two of the chairs were bought at their New York house. I bought them there.

Cross-int. 63. When did you buy them and which chairs did you buy?

Ans. No. 1 and No. 2. I should think it was along late in the fall—last fall.

Cross-int. 64. Please examine carefully Compl'nts' Exhibit Complainants' Chair and see if you find any patent date on it or anything to indicate who it was made by.

Ans. If there is a patent mark on there it must be covered up with the finish. I don't see it. I don't see anything to indicate who it was made by.

Cross-int. 65. How long since you first saw this chair?

37*a* Ans. I should think it was over two years. It may be three. I couldn't tell just the time.

Redirect examination by J. E. MAYNADIER, Esq., of counsel for complainants:

Int. 66. How soon can you produce a sample of the Kenna chairs as manufactured and sold by you?

Ans. To-morrow, I think.

Int. 67. State whether you have or have not stamped all the chairs

manufactured by you under the Kenna patent with the number and date of that patent; and, if so, on what part of the chair have you stamped the date of the patent.

Ans. We have stamped them. Usually they are stamped under the step; sometimes, perhaps, on the frame.

Int. 68. As to the Caulier patent, suppose you were told that it was owned by Chichester and not by Thompson, Perley & Waite, and that Thompson, Perley & Waite had a limited license under it to make chairs in walnut, would you say that was not a fact?

Ans. Come to refresh my mind, I think we merely had a right to manufacture chairs under that patent in walnut.

Int. 69. How long since you made the Pearl chair?

Ans. I certainly could not tell you. It is a number of years.

(It is agreed by both parties that the testimony of the witness will be closed when the parties meet to take the testimony of defendants.)

(It is also agreed that certified copies showing the title may be put in as soon as they are received from the Patent Office.)

BOSTON, *Sept.* 10, 1886.

Pursuant to agreement of counsel certified copies of the assignments of the Kenna patent in suit, having been received from the Patent Office, are put in evidence and marked Complainants' Exhibit Assignments, W. A. C., sp'l ex'r.

Also the letter referred to in the cross-int. 49 of Mr. Waite is put in evidence and marked Defendants' Exhibit Pearl, W. A. C., sp'l ex'r.

WORCESTER, *Sept.* 15, 1886.

In the absence of Mr. Waite, whose deposition was to be continued to-day, the hearing was adjourned to Thursday, Sept. 16.

38 Redirect examination by J. E. MAYNADIER, Esq.:

WORCESTER, *Sept.* 16, 1886.

Int. 70. Can you now produce the chair inquired about in your 66th interrogatory? If so, please do so.

Ans. I can. Here it is.

(The chair produced is put in evidence and marked Complainants' Exhibit Complainants' Kenna Chair, W. A. C., sp'l ex'r.

Recross-examination by THOS. H. DODGE, Esq.:

Cross-int. 71. You have stated that Complainants' Exhibit Complainants' Kenna Chair is a sample of those manufactured by your firm, the complainants. Why do you call it a Kenna chair?

Ans. I presume it was because Mr. Kenna owned the patents.

Cross-int. 72. Are you familiar with the chair described and represented in the Kenna patent upon which this suit is brought?

Ans. I am.

Cross-int. 73. Will you state what parts of the chair described in

said Kenna patent have been left out in the construction of Complainants' Kenna Chair, put in evidence this morning by you, taking up the parts separately and speaking slow, so that the commissioner can take them down for the information of the court?

Ans. I would like to look at the patent. (Complainants' Exhibit Kenna Patent in suit is handed to witness.) The construction is about the same, aside from the slotted piece of wood on the side in the Kenna patent. This chair (Ex. Compl'nts' Kenna Chair) is not made that way. I can see no other practical difference in the chairs.

Cross-int. 74. As nearly all the parts of the chair described in the Kenna patent on which this suit is brought are lettered, will you state in detail which of the parts designated by letters in the Kenna patent are left out in making this Complainants' Kenna Chair, specifying the parts by letter which are left out?

Ans. The letters G *g*. I don't see as anything else is left out.

Cross-int. 75. And you are as positive about this, are you, as anything else you have testified to in your examination?

38*a* Ans. I would not be positive that there is nothing left out. There are pins and slots to substitute for those long slots and those catches. I don't know as there is anything left out but those which take the place of the long slots.

Cross-int. 76. Do you find in this Exhibit Complainants' Kenna Chair the hinged slotted pieces marked G in the Kenna patent?

Ans. I do not.

Cross-int. 77. Do you find the spring catch F?

Ans. I do not.

Cross-int. 78. Do you find the rod marked *f*?

Ans. I do.

Cross-int. 79. Do you find the rear bent standards marked *a*?

Ans. I find the standards, but not bent.

Cross-int. 80. Then you do not find the bent standards in the patent marked *a*, do you?

Ans. I do not.

Cross-int. 81. Do you find the spring J and pin K?

Ans. I do not.

Cross-int. 82. Do you find the pins H?

Ans. I do.

Cross-int. 83. Do you find the notches g^1 in the hinged slotted bars G?

Ans. I do not.

Cross-int. 84. Do you find a spring support, F, above the top of the bail E?

Ans. I do not.

Cross-int. 85. What difference in the operation of Complainants' Ex. Complainants' Kenna Chair would it make if the hinge were above the side round in the chair frame instead of below it, the front legs being extended up, of course, to that point?

Ans. I could not answer that question without experimenting with the chair—making one in that manner and seeing what shape the chair was in after making a practical test of it.

Cross-int. 86. You don't see from your long experience in the manufacture of chairs why it wouldn't work just as well, do you?

Ans. I shouldn't think it would work as well.

Cross-int. 87. If you have any reasons please give them why it wouldn't work as well.

39 Ans. I should think when it was a low chair it would be so low as not to be a practical chair, for one thing.

Cross-int. 88. Anything else?

Ans. There may be other things, but it is something I hadn't thought of.

Cross-int. 89. Referring to the chair described in the Kenna patent upon which this suit is brought, did you ever see a full-sized chair made in accordance with the chair represented in the drawings and described in the specifications of that patent?

Ans. I could not say that I ever did.

Cross-int. 90. Did your firm or you ever make any effort to have one made; and, if yea, what success attended such effort?

Ans. We never made one just like the patent.

Cross-int. 91. Did you ever make one any nearer the patent than Complainants' Exhibit Complainants' Kenna Chair?

Ans. Never.

Cross-int. 92. Did you or your firm ever try to make one any nearer?

Ans. I could not say.

Cross-int. 93. Have you any knowledge of any such attempt by any one acting under your or your firm's direction or permission?

Ans. Never under my directions. Mr. Perley has worked at those things a great deal of his time. What he has done in that particular direction I don't know. I don't know of any attempt being made by anybody to make one any nearer.

Cross-int. 94. Do you know that Mr. Kenna, the patentee, ever made a chair like Complainants' Exhibit Kenna Chair?

Ans. I have understood that he did, but I never saw one.

Cross-int. 95. Of your own personal knowledge, do you know that he ever did?

Ans. I could not swear to it.

Cross-int. 96. Don't you know that the chair like Complainants' Kenna Chair was first made by Ford, Johnson and Co., of Michigan City, Mich.?

Ans. I do not.

39*a* Cross-int. 97. Have you any knowledge that Ford, Johnson & Co. ever made such a chair?

Ans. I have understood that they made them.

Cross-int. 98. Have you any knowledge that anybody else but Ford, Johnson and Co. ever made them prior to your firm commencing to make them?

Ans. I understood that Mr. Kenna made some before we commenced. I suppose that it was before Ford, Johnson & Co. made them. I don't know.

Cross-int. 99. Did you ever meet Mr. J. W. Kenna, the patentee;

and, if yea, did he ever inform you that he made such chairs before Ford, Johnson & Co. commenced to make them?

Ans. I have. I think that is where I got the impression—from Mr. Kenna.

Cross-int. 100. You will not — positively that Mr. Kenna informed you that he made chairs of this description before Ford, Johnson & Co. made them, will you?

Ans. No, sir.

Cross-int. 101. Will you swear positively that he told you that he ever made any such chairs?

Ans. Yes, sir.

Cross-int. 102. How many?

Ans. I could not state the number. I don't know as he told me the number.

Cross-int. 103. Referring to Defendants' Exhibit Pearl, did Thompson, Perley & Waite furnish Heywood Bros. & Co. with the first Pearl chairs which they sold, so far as you have any knowledge?

Ans. It would be impossible for me to tell who had the first chairs we made.

Cross-int. 104. Did your firm furnish the first Pearl chairs which Heywood Bros. & Co. sold?

Ans. That would be impossible for me to tell; I don't know. I think—I know I have seen them in their store before we ever sold them any, so that we did not sell them the first.

Cross-int. 105. How long should you say it was since you first saw them in Heywood Bros.' store before you commenced to sell them chairs of that same description?

40 Ans. I could not tell.

Cross-int. 106. If you should see a cut of the Pearl chair referred to would you recognize it?

Ans. I presume I should.

Cross-int. 107. Please look at the catalogue which the commissioner will mark Defendants' Exhibit Heywood Bros. & Co. Catalogue, Oct. 1, 1878, and see if you find on page 8 the Pearl chair represented. And, if yea, what are the numbers of such chair as given in that catalogue?

(The catalogue is now offered in evidence and marked as above stated.)

Ans. I do find it. The number is 292—both cuts. One shows a high chair and one a low chair.

Cross-int. 108. Please examine the other cuts on page 8 of said exhibit and state what other chairs of complainants' manufacture you find represented, giving the numbers and names.

Ans. Ruby folding table, wagon, and rocking horse, No. 296; Gem folding table, carriage, and rocker, No. 295; Gem folding table and carriage, No. 189; Gem folding table, carriage, and crib, No. 294; Gem folding table, No. 188 F; Continental cane-back folding table, No. 125 F; Douglas folding table, No. 55 F; double-top cane folding table, No. 57 F.

Cross-int. 109. How long prior to 1878 did your firm manufacture

and sell the chairs referred to in your last answer, and which style did you first manufacture, so far as your present recollection enables you to answer?

Ans. I should think perhaps in 1872 or 1873. The first chair was Gem folding table, No. 188 F, and Continental cane-back folding table, No. 125 F. They are the same principle.

Cross-int. 110. State what, if any, authority or permission you ever obtained or had to make the Pearl, No. 292, and from whom.

Ans. We got our right from Josiah Partridge under the Caulier patent.

Cross-int. 111. Under any other patent than the Caulier patent?

Ans. No, sir; except what patents we owned ourselves.

Cross-int. 112. Do you know under what authority Partridge acted?

Ans. He owned the right to manufacture the black walnut
41 chair in the United States. That right was assigned to Thompson, Perley & Waite.

Cross-int. 113. You refer to Frederick Caulier's patent of April 23, 1878, do you not?

Ans. I do.

Redirect examination by J. E. MAYNADIER, Esq.:

Int. 114. Please refer to your 77th and 84th cross-interrogatories and state what equivalent, if any, you find in Exhibit Complainants' Kenna Chair for the part marked F in the Kenna patent.

Ans. It is a hook instead of a spring.

Recross-examination by THOS. H. DODGE, Esq.:

Cross-int. 115. What is the hook referred to in your last answer used for in Complainants' Exhibit Complainants' Kenna Chair?

Ans. To hold the chair down, so that it will not tip over forward when in its low position.

Redirect:

Int. 116. What is the hook used for when the chair is in its high position?

Ans. It keeps the supplementary support in place.

Recross:

Cross-int. 117. When the chair is in its high position is any weight of the chair seat or of the occupant thereof supported by the hook to which you have referred?

Ans. It is not.

GILMAN WAITE.

Attest: WILLIAM A. COPELAND,
Special Examiner.

42 *Evidence for Defendants,*

Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before me, William A. Copeland, special examiner.

WORCESTER, *Sept.* 16, 1886.

Present: J. E. Maynadier, Esq., of counsel of complainants; Thomas H. Dodge, Esq., of counsel for defendants.

Defendants put in evidence Patent Office copies of patent No. 217,341, dated July 8, 1879, to Franklin Chichester, marked Defendants' Exhibit Chichester Patent, 217,341, W. A. C., sp'l ex'r.

Patent No. 202,788, dated April 23, 1878, to Frederick Caulier, marked Defendants' Exhibit Caulier Patent, W. A. C., sp'l ex'r.

Patent No. 137,610, dated April 8, 1873, to Harris & Childs, marked Defendants' Exhibit Harris & Childs Patent, W. A. C., sp'l ex'r.

No. 207,621, Sept. 3, 1878, to George M. Patten, marked Defendants' Exhibit Patten Patent.

No. 213,610, March 25, 1879, to Charles H. Barnes, marked Defendants' Exhibit Barnes Patent, W. A. C., sp'l ex'r.

No. 188,120, March 6, 1877, to French & Hunting, marked Defendants' Exhibit French & Hunting Patent, W. A. C., sp'l ex'r.

No. 217,652, July 15, 1879, to George W. Swain, marked Defendants' Exhibit Swain Patent, W. A. C., sp'l ex'r.

No. 215,601, May 20, 1879, to Dexter Gleason, marked Defendants's Exhibit Gleason Patent, W. A. C., sp'l ex'r.

Reissue No. 10005, January 3, 1882, to Emil Worch, marked Defendants' Exhibit Worch Patent, W. A. C., sp'l ex'r.

No. 220,258, Oct. 7, 1879, to A. B. Stevens, marked Defendants' Exhibit Stevens Patent, W. A. C., sp'l ex'r.

No. 259,368, L. A. Chichester, June 13, 1882, marked Defendants' Exhibit Chichester Patent, 259,368, W. A. C., sp'l ex'r.

43 No. 260,843, to L. A. Chichester, July 11, 1882, marked Defendants' Exhibit Chichester Patent, 260,843, W. A. C., sp'l ex'r.

No. 317,668, to Frank F. Parker, May 12, 1885, marked Defendants' Exhibit — Patent, W. A. C., sp'l ex'r.

Also a copy of file-wrapper and contents of patent No. 224,923, to J. W. Kenna, dated Feb. 24, 1880, and marked Defendants' Exhibit File of Kenna Patent, W. A. C., sp'l ex'r.

Deposition of Lemuel A. Chichester.

Direct examination by THOMAS H. DODGE, Esq., of counsel for defendants.

Int. 1. What is your name, age, residence, and occupation?

Ans. Lemuel A. Chichester; 55; Phœnicia, Ulster Co., N. Y.; superintendent of the Chichester Chair Co., in Phœnicia.

Int. 2. How large is said company engaged in the manufacture of chairs?

Ans. They employ about 150 hands.

Int. 3. How long have you been engaged in your present position for that company?

Ans. 21 months.

Int. 4. How many years have you been engaged in business connected with the manufacture of chairs of any kind and at any place?

Ans. About 35 years.

Int. 5. Look at the child's chair (now offered in evidence by the defendants and marked Defendants' Exhibit Chichester Chair No. 1) and state, if you know, when and by whom or under whose direction this identical chair was made.

(The name of the exhibit is objected to for the reason that the chair in question seems to complainants' counsel to be the same in substance as that heretofore called the Pearl chair, and he suggests to defendants' counsel that this exhibit be called Defendants' Exhibit Pearl Chair No. 1.)

44 Ans. It was made in August, 1877, by my direction.

Int. 6. Is there any one present in the room besides yourself who worked on the chair? If so, give the name.

Ans. There is; Mr. John Blythe, of Phœnicia.

Int. 7. I notice that under the front of the chair seat the letters "L. A. C.," then underneath that "Aug., 1877," are written; state, if you know, when and by whom that writing was made.

Ans. About the time of the date, by myself.

(Defendants' counsel offers in evidence another chair, to be marked Defendants' Exhibit Chichester Chair No. 2. The chair is so marked.)

(Same objection as to the name of the exhibit.)

Int. 8. Look at the chair, Defendants' Exhibit Chichester Chair No. 2, and state, if you know, when and by whom that chair was made.

Ans. It was made in Sept., 1877, by my direction.

Int. 9. If you manufactured and sold chairs like the last-named exhibit, state about how many.

Ans. Between 1,400 and 1,500.

Int. 10. If you stopped manufacturing and selling chairs of the pattern of said exhibit, state about when and why you stopped.

Ans. It was in October, 1878, by reason of claimed infringement of a reissue patent, I think, by Tenney and Hobbs, and owned by Thompson, Perley & Waite. We made an agreement to stop for that reason.

Int. 11. Look at the chair marked Complainants' Exhibit Defendants' Chair 1 and state if ever you manufactured chairs like that exhibit.

Ans. I have. I made that one.

Int. 12. State when, as near as your recollection will enable you to do so, you commenced manufacturing such pattern of chairs.

Ans. The summer of 1879.

Int. 13. About when did you first commenced to make drawings or patterns of that style of chair?

Ans. About the same time. It was in the summer of 1879.

Int. 14. Look at vol. 13 of the Official Gazette, page 674, reissue 8166, dated April 9, 1878, to Tenney & Hobbs, assignors to Thompson, Perley & Waite, and state if that is the reissue to which
45 you referred as the one that Thompson, Perley & Waite claimed was infringed in making chairs like Defendants' Exhibit Chichester Chair No. 2.

Ans. Yes; that is the one.

Int. 15. State whether or not they ever claimed that you infringed that reissue patent in making chairs like Complainants' Exhibit Defendants' Chair 1.

Ans. Not that I ever knew.

Int. 16. State, if you recollect, whether or not you ever made and sold chairs like Defendants' Exhibit Chichester Chair No. 2 to Heywood Bros. & Co., of Gardner, Mass.

Ans. Well, I never sold them direct to them. They were sold to Chichester Bros., of New York, who sold them to Heywood Bros. The firm of Chichester Bros. was composed of E. P. Chichester, of Brooklyn, N. Y., and myself.

Int. 17. Look at Defendants' Exhibit Heywood Bros. & Co. Catalogue, Oct. 1, 1878, page 8, and state if you find a cut or cuts on that page which represents the chair which was sold to Heywood Bros. & Co., as stated in your last answer.

Ans. I do; cuts No. 292.

Int. 18. I notice the name "Pearl" is given to the chair in the exhibit catalogue to which your attention has been called. State, if you know, who first gave that name to the chair.

Ans. I think the name was suggested by Josiah Partridge, at 360 Pearl St., N. Y.

Int. 19. What did Partridge have to do with such chairs?

Ans. He was part owner in the license to manufacture from Frederick Caulier.

Int. 20. Who was the other part owner?

Ans. E. P. Chichester.

Int. 21. Did that license have anything to do with the patent granted to Frederick Caulier April 23, 1878—Defendants' Exhibit Caulier Patent?

Ans. It permitted me to make the chair under that patent.

Int. 22. Then, if I understand you rightly, Mr. Partridge and yourself owned or had a license under said Caulier patent? Am I correct?

Ans. You are.

46 Int. 23. State what, if any, arrangement you or Chichester Bros. had with Heywood Bros. & Co. in reference to chairs like Defendants' Exhibit Chichester Chair No. 2.

Ans. They loaned us—Chichester Bros.—money and took that as security.

Int. 24. You mean, do you not, that they took a lien on the invention represented by the Exhibit Chichester Chair No. 2 for the money loaned?

Ans. They took a lien on the right to manufacture under the patent.

Int. 25. Look at Defendants' Exhibits Chichester Patents 259,368 and 260,843 and state if you are the patentee named therein.

Ans. I am.

Int. 26. State whether or not P. Derby & Co., of Gardner, Mass., have a license or right from you to manufacture chairs under patents which you own or control.

(Objected to as inadmissible; also immaterial.)

Ans. They have.

Cross-examination by J. E. MAYNADIER, Esq., of counsel for complainants:

Cross-int. 27. When was the lower front round put into the chair marked Defendants' Exhibit Chichester Chair No. 1?

Ans. I think there was a round put in at the time when the chair was made.

Cross-int. 28. I think you have not answered my question. Please do so.

Ans. The one in the chair at the present time is in place of one that was in the chair originally. That has been put in recently.

Redirect examination by THOMAS H. DODGE, Esq., for defendants:

Int. 29. There were wheels, were they not, on the original lower round the same as on the present lower round?

Ans. Yes.

LEMUEL A. CHICHESTER.

Attest: WILLIAM A. COPELAND,
Special Examiner.

47 *Deposition of John Blythe.*

Direct examination by THOMAS H. DODGE, Esq., of counsel for defendants:

WORCESTER, *Sept.* 16, 1886.

Int. 1. What is your name, age, residence, and occupation?

Ans. John Blythe; 55; Phœnicia, Ulster Co., N. Y.; chair-maker.

Int. 2. How long have you been engaged in making chairs, and where?

Ans. About 38 years, in Poughkeepsie and at Phœnicia, Ulster Co.

Int. 3. For whom have you worked during the past 10 years?

Ans. Mr. L. A. Chichester.

Int 4. Look at the chair, Defendants' Exhibit Chichester Chair No. 1, and state if you assisted in making said chair and what you did and how you are able to identify the parts.

Ans. Well, I bent those braces running from the back of the seat to the foot-rest. I tennoned those spindles and took this rim to the boring lathe and stood over the man while he was boring it; that is about all that I did. I believe I got these irons from the blacksmith shop. The rest, I believe, Mr. Chichester superintended. He stood over the man at the bench.

Int. 5. What do you notice, if anything, about the braces that enables you to identify them?

Ans. Well, Mr. Chichester wanted them in somewhat of a hurry, and I took the board and laid the shape and bored a few pin-holes in it to get the shape and bent the braces around the pins. The marks of the pins are on the braces, and that enables me to identify them.

Int. 6. Mr. L. A. Chichester, who has been examined as a witness in this case, states that the chair was made in Aug., 1877. What have you to say about the date when it was made?

Ans. The chair was made at that time.

Int. 7. Referring, now, to Defendants' Exhibit Chichester Chair No. 2, state whether or not you have any knowledge of that chair being made.

Ans. That chair was made during the last days of September, 1877, but was not completed until October 1. It was taken
48 to the office on the first day of October, I feel quite sure. Mr. Chichester wrote the date on the chair himself; I went over with him.

Int. 8. Please look at the chair and state if you find the writing; and, if yea, what it is.

Ans. Yes; I think that is it—Oct. 1, 1875; that is correct.

(Witness reads the date from the bottom of the chair-seat frame.)

Int. 9. And you saw Mr. Chichester when he wrote that date on the bottom of the chair-seat frame after the chair had been completed, did you not?

Ans. Yes, sir.

(Cross-examination waived.)

JOHN BLYTHE.

Attest: WM. A. COPELAND,
Special Examiner.

(Adjourned.)

LEMUEL A. CHICHESTER recalled.

Direct examination by THOMAS H. DODGE, Esq., for defendants:

WORCESTER, *Sept.* 17, 1886.

Int. 1. Will you state whether or not before or at the time of settlement with Thompson, Perley & Waite they desired to purchase

the Caulier patent to which you have referred; and, if yea, whether you declined their offer or not?

Ans. At the time of the settlement Mr. Waite desired me to fix a price upon the Caulier patent that we would sell it for. I declined to sell it.

Int. 2. Will you now state whether or not at the time of such settlement you had conceived of the idea of making the chair according to the pattern of Complainants' Exhibit Defendant-' Chair 1, in which all four wheels are attached to the same frame as the chair seat?

(Objected to as manifestly improper on a second deposition; also because of the immaterial detail of construction to which the question is mainly addressed.)

Ans. I had the plan in my mind at that time.

Int. 3. State whether or not you explained the plan of con-
49 struction of the chair to any one at that time or immediately after; and, if yea, to whom and when.

(Same objection.)

Ans. I explained it to my brother, Edward P. Chichester, at about the same time—at the time of the settlement.

Int. 4. If you have the original settlement paper here will you hand it to complainants' counsel for examination, and, after he has examined it, state the date of the settlement as appears from the document, and also by whom the same is signed?

Ans. I have the settlement paper and hand it to complainants' counsel for examination. The date is Oct. 30, 1878. It is signed by Thompson, Perley & Waite and Lemuel A. Chichester.

Int. 5. By whom is it witnessed?

Ans. E. P. Chichester.

Int. 6. Is E. P. Chichester the brother to whom you referred in answer to Int. 3?

Ans. It is.

Int. 7. And he is present at this examination, is he?

Ans. He is.

Int. 8. State whether or not you used all reasonable diligence after you conceived the idea of this form of chair and after the settlement in preparing for manufacturing and putting said chair upon the market.

(Same objection.)

Ans. I did.

Int. 9. Look at the Complainants' Exhibit Kenna Patent in suit and state if you have examined the drawings and specifications of said patent and if you understand the construction of the chair therein described and patented.

Ans. I have examined the drawings and I have read over the specifications, but not in view of being called upon as an expert in this line of chairs. I have examined more carefully the claims. I

think I understand the construction of the chair therein described and patented.

Int. 10. As a manufacturer of chairs for a long number of years, as stated by you, state whether or not the chair, Complainants' Exhibit Complainants' Kenna Chair, is a correct or incorrect
50 representation of the chair shown and described in the Kenna patent to which your attention has been called, and, after answering the first clause of this question, give your reasons in brief for the answer you may make.

Ans. The chair presented, in my opinion, is not the same as claimed in the patent. I don't find the swinging slotted bar G in this chair, as shown in the drawing, nor the yielding rest or support F as described.

This chair—Complainants' Exhibit Complainants' Chair—when in its lower position rests entirely upon a back round. The back rests upon a round to hold the seat in the lower position. In the drawing referred to it depends upon the slotted bar G for that purpose. Those are the main points of difference.

Int. 11. Examine Complainants' Exhibit Model 3 and state whether you find in said model the yielding rest or support F called for and forming one of the essential elements of the combination described in the said Kenna patent and claimed in the combination embraced in the second claim thereof.

Ans. I have examined the model referred to and find the yielding rest or support F. I also find that this chair would be inoperative without it.

Int. 12. Will you examine the Kenna patent again and see if you are not mistaken in finding the yielding rest or support F in this model?

Ans. I was mistaken in this catch on here to prevent the handle going through. This catch is not yielding, as implied in the claim.

Int. 13. I notice in this model that it has a bail, and on the right-hand side a slotted bar or arm, but a different device on the left-hand side. Please state whether or not, if both sides were made like the present left-hand side, there would be any use for the bail, which seems to have been marked E in pencil, or for any yielding rest or support F for supporting the chair seat in its raised position, both of which are called for in the combination embraced in the second claim of the Kenna patent.

Ans. There would be no use for either of them.

Int. 14. If both sides were made like the slotted bar on the right would the chair rest be supported in its elevated position without the use of the bail E?

51 Ans. It cannot.

Int. 15. I notice in this model that at the upper end of the slotted bar when the chair seat is in its elevated position there are notches extending back from the long slots. Will you look at the slotted bars in the Kenna patent and state whether those bars have anything of the kind?

Ans. They have not.

Cross-examination by J. E. MAYNADIER, Esq., of counsel for complainants:

Cross-int. 16. What do you think the chair frame B of the Kenna patent rests upon when used as a low chair or carriage?

Ans. It rests upon the wheels.

Cross-int. 17. And what supports the axles of the wheels?

Ans. The base frame A represented in the drawings.

Cross-int. 18. It seems to me you are plainly wrong in your answer. Please re-examine the Kenna patent and answer the same question again.

Ans. I don't really understand the question.

(The preceding questions and answers on cross-examination read to the witness.)

I should say it rested on the lower end of the slotted bar G.

Cross-int. 19. Were you wholly unfamiliar with the Kenna patent until this morning?

Ans. Only the claims; I was not familiar with the specification.

Cross-int. 20. Are you now willing to admit that you do not clearly understand the drawings and specification of the Kenna patent?

Ans. I think I understand the drawings—its plan of operation.

Cross-int. 21. You have said that the axles of the wheels or one of the axles "rested on the lower end of the slotted bar G." It seems to me that a glance at the drawings shows the contrary. Fig. 2, for example, will show you, I think, that it is impossible for either axle to rest upon the bar G. Will you now admit that you are mistaken in saying that the axles or either of them "rested on the end of the slotted bar G"?

Ans. I referred in that answer to the frame A.

52 Cross-int. 22. Please state now, then, what supports the axles of the wheels, in your opinion, in the Kenna patent.

Ans. They are attached to the base frame A.

Cross-int. 23. Don't you see from Fig. 2 that you are entirely wrong as to that, and that the axles are not attached to the base frame A?

Ans. I see the rear axle is not. I judge from the drawing figure 3 where the chair is in its lower position.

Cross-int. 24. Can you now tell what supports the rear axle in the Kenna patent?

Ans. It is attached to the frame B; to the part that forms the frame B.

Cross-int. 25. To what is the front axle attached?

Ans. The same frame.

Cross-int. 26. Does the spring catch F in the Kenna patent do anything else than hold the frame E in its place when the chair is high?

Ans. It holds the bail in position; the handle E.

Cross-int. 27. Doesn't the hook in the chair marked Exhibit Complainants' Kenna Chair do the same thing?

Ans. Yes.

Cross-int. 28. Doesn't the spring catch F in the Kenna patent yield to allow the bail E to go to place; and doesn't the hook in Exhibit Complainants' Kenna Chair yield to let the bail go to place?

Ans. It might possibly be construed that way; but I don't see any yielding catch as represented in the Kenna patent.

Cross-int. 29. Suppose you owned the Kenna patent and Thompson, Perley & Waite were making chairs like Exhibit Complainants' Kenna Chair in defiance of the Kenna patent, don't you think it likely that you would believe under those circumstances that they were infringing the Kenna patent?

Ans. I should have doubts about it.

Cross-int. 30. What sort of a support or yielding rest or spring catch do you think would be the same substantially as that marked F in the Kenna patent?

(Question objected to, since the witness is not required to imagine catches. If defendants' counsel wishes to obtain the opinion
53 of the witness he must inquire as to some special device or exhibit it to the witness before requiring an answer. The yielding support F in the Kenna patent shows just what it does support, to wit, the chair seat.

(The complainants' counsel feels bound to object to the objection because he is confident that his assertion that the support F supports the chair seat is absolutely groundless.

Defendants' counsel calls the attention of complainants' counsel to the statements in the specification, to wit, "a bail, E, is hinged to the lower rear corner of the frame A and swings forward under the spring catch F on a rod, *f*, at the lower rear corner of the chair frame to support the chair at the rear when in an elevated position;" that in figure 2 of the drawings, which the patentee says represents the chair in its elevated position, the bail E is shown in position, but back of the rod *f*, thus showing that the weight of the chair seat rests on the part F, and that in turn on the top of the bail E, and it is so described and claimed in the second claim of the patent; therefore the complainants' counsel must be mistaken about the position taken by the defendants' counsel, since the latter position is strictly in accordance with the Kenna specification.

(Complainants' counsel understands the portion quoted from the Kenna patent to mean the bail E, and not the catch F, is designed to support the chair at the rear, and denies *that* the statement as to figure 2, and asserts that the frame E is directly under the rod *f* in the drawings.)

Ans. I should say in connection with the swinging slotted bar nothing but a yielding catch as described and claimed in the Kenna patent would answer the purpose.

Cross-int. 31. Why is it that any catch which yields to allow the frame E to go to place and then serves to hold the frame E practically in place don't appear to you to be, as a practical man, a plain equivalent of the support F or the spring catch F or the yielding rest F, if you prefer those terms?

Ans. Because in connection with the slotted bar when the chair is elevated the pin H approaches the end of the slot and becomes rigid; therefore the necessity of a yielding catch to receive the handle or the support.

Cross-int 32. What do you call the catch in the Pearl
54 chair, a sample of which is marked Defendants' Exhibit Chichester Chair No. 2? That is, do you call it a support for the frame or bail or a spring catch or a yielding rest or neither?

Ans. I call it a catch to hold the handle in position when the chair is elevated.

Cross-int. 33. Isn't what you have just said a correct, fair, and full description of the part marked F in the Kenna patent?

Ans. It is not a yielding catch in the sense that is claimed in the Kenna patent.

Cross-int. 34. What is the reason, in your opinion, that the frame marked with a tag E in Exhibit Defendants' Chair 3 snaps past centers when the chair is brought into its high position?

Ans. Owing to the manner of its hinging. It is not rigid. There is give enough to the hinge to allow it to come in position.

Cross-int. 35. You are interested in this case, are you not, so far as concerns the chairs marked Exhibits Defendants' Chair 1 and Defendants' Chair 2?

(Defendants' counsel asks the commissioner to explain to the witness that the question has reference to Complainants' Exhibit Defendants' — 1 and Complainants' Exhibit Defendants' Chair 2.

(The requested explanation is made.)

Ans. I am, indirectly.

Cross-int. 36. Please state briefly what you think is the substance of the invention claimed in your patents—Exhibits Chichester Patent 259,368 and Chichester Patent 260,843.

Ans. I refer you to the claim in the patents.

Redirect examination by THOMAS H. DODGE, Esq.:

Int. 37. Referring to Complainants' Exhibit Defendants' Chair 3, state what prevents the chair seat, when it is raised, from tipping over forward.

Ans. The manner of hinging in front.

Int. 38. Explain how the manner of hinging at the front produces this result.

Ans. There is a shoulder formed in front of the hinge, in the leg, that prevents it from going forward.

55 Int. 39. Is this the hinge referred to in your answer to the 34th cross-question in speaking of the same chair?

Ans. It is.

Int. 40. Referring to the *the* Kenna patent, what prevents the chair from tipping over forward when raised in that chair?

Ans. The slotted bars G.

Int. 41. Do you find any bail in Complainants' Exhibit Defendants' Chair 3 such as called for in the Kenna patent?

Ans. None whatever.

Int. 42. State whether or not in both the chairs, Defendants' Exhibit Chichester Chair No. 1 and Defendants' Exhibit Chichester Chair No. 2, they had swinging bails and spring catches for the bails the same as now shown, when they were first made by you as appears in your previous testimony.

Ans. They had.

Recross-examination by J. E. MAYNADIER, Esq.:

Cross-int. 43. Don't you think, on the whole, the bail and catch in the chairs Exhibits Chichester Chair 1 and Chichester Chair 2 are substantially the same as the parts marked E and F in the Kenna patent?

Ans. Yes; so far as holding the chair in its elevated position.

Cross-int. 44. Can't you say yes without any qualification?

Ans. Yes; substantially the same.

LEMUEL A. CHICHESTER.

Attest: WILLIAM A. COPELAND,
Special Examiner.

Deposition of Edward P. Chichester.

Direct examination by THOMAS H. DODGE, Esq., of counsel for defendants:

WORCESTER, *Sept.* 17, 1886.

Int. 1. What is your name, age, residence, and occupation?

56 Ans. Edward P. Chichester; 51; Brooklyn, N. Y.; manager for a wholesale chair-house in New York. The name of the house is R. N. Chichester.

Int. 2. How long have you been engaged in the chair business?

Ans. About 35 years.

Int. 3. Look at Defendants' Exhibit Chichester Chair No. 2 and *and* state when you first had knowledge of that chair.

Ans. About Oct. 5, 1877.

Int. 4. State briefly how you are able to fix the time, giving briefly the facts or circumstances in the case.

Ans. I received the chair at the time mentioned in New York. My brother, Lemuel A., requested me to take the chair to Heywood Bros. & Co., in Gardner, Mass., to make some arrangements with them for a loan of some money, which I done between the 5th and 10th of October, 1877. I know that is the time, for the reason that I find charged on my cash book on the 13th of October, 1877, my expenses after my return, and that on the 16th of October, by reference to the same book, I received the money from Heywood Bros. for which I was sent to negotiate—$5,000.

Int. 5. Have you your books here which complainants' counsel can examine, if he desires, to confirm what you have testified to?

Ans. I have.

(The books referred to are produced and the charges are pointed out to complainants' counsel.)

Int. 6. Please hand the book to the examiner and point out the charge for expense, and also the credit of cash from Heywood Bros., that he may take a copy of the same as a part of your answer.

Ans. I have done so.

(The entries are as follows:)

"1877, Oct. 13. Expense ac't E. P. C., expenses east—24."
"1877, Oct. 16. Heywood Bros. & Co., Gardner- 4,879 45
120 55
——— 5,000 00"

W. A. C., *Sp'l Ex'r.*

Int. 7. From the entries of cash received I infer that you took a note from Heywood Bros. & Co. and had it discounted. How is this?

Ans. It would appear so.

57 Int. 8. Is Defendants' Exhibit Chichester Chair No. 2 the chair you took to Heywood Bros. & Co. to show the construction of the chair?

Ans. To the best of my knowledge and belief it is.

Int. 9. State whether or not the chair was afterwards manufactured and sold in large numbers.

Ans. They were.

Int. 10. Did Heywood Bros. & Co. keep them for sale?

Ans. They did.

Int. 11. Look at Heywood Bros. catalogue, dated Oct. 1, 1878, and state if No. 292, on page 8, represents the chair referred to.

Ans. They do.

(Noon recess.)

Int. 12. Can you tell by referring to your books how soon you put any of them on sale in New York city or vicinity? If yea, please do so.

Ans. I can. (Witness refers to the book.) The first of these chairs delivered to the trade was with bills of other goods, Nov. 10, 1877. I find this on my day book, which is here present.

Int. 13. You have been present during the examination of your brother Lemuel A. Chichester and heard him testify that by an agreement dated Oct. 30, 1878, with Thompson, Perley & Waite, the manufacture and sale of these chairs was discontinued. Do you recollect that settlement?

Ans. I do.

Int. 14. State whether or not, and, if yea, when, you first had a conversation with your brother in reference to a chair of the pattern represented by the Complainants' Exhibit Defendants' Chair 1.

(Objected to because improper by reason of ambiguity, the apparent meaning of the question being a conversation about a chair. I have no doubt that the real meaning of the question is entirely different.)

Ans. I have a recollection that at the time of the settlement with

Thompson, Perley & Waite, or very soon after, of our talking together about carriage chairs, and that he said, As we cannot make the Pearl chair any more I have an idea of changing the chair by taking the wheels off from the roller-carrying legs in front and putting them on the rear frame of the chair in some manner
58 and cutting the front legs in two at some distance below the seat and hinging it there; as soon as he got time he was going to see what he could do with it. That is about as near as *near as* I can recollect it, to my best recollection.

Int. 15. From that time forward state whether or not he gave attention to the matter, and how soon thereafter was the chair put upon the market—Complainants' Exhibit Chichester Chair No. 1.

Ans. Well, he told me, when in New York at different times, that he was working at it and hoped to have some ready in time for the spring trade. What diligence he used in getting them out I am unable to say. I am unable to say when they were put on the market.

Int. 16. Asher B. Stevens, now of New Bridge, N. J., has testified in this suit as a witness for the complainants. Are you acquainted with Mr. Stevens? And, if yea, state when first, if ever, you saw him in your store looking at the chair called Pearl—Defendants' Exhibit Chichester Chair No. 2.

Ans. I am acquainted with Mr. Stevens, and, to my best recollection and belief, he was in my store, 368 Pearl St., New York, at about the time I first received these chairs and put them on the market. It was in the fall or winter of 1877. It was before Jan., 1878. He examined the chair very critically, and I talked with him at the time about the chair being a new thing. In fact that was my first acquaintance with Mr. Stevens to know who he was.

Int. 17. Do you recollect of his being in and out of your store after that time?

Ans. I saw him at different times. I don't know whether he was in our store or not. He was in the neighborhood, and was in Heywood Bros.' store.

Int. 18. State whether or not you have manufactured and sold such chairs like Complainants' Exhibit Defendants' Chair 1 from the time you first commenced to put them on the market to the present time.

Ans. I have not manufactured, unless you call varnishing the chair manufacturing, but have sold it during that time.

(Cross-examination waived.)

EDWARD P. CHICHESTER.

Attest: WILLIAM A. COPELAND,
Special Examiner.

59 It is agreed that Defendants' Exhibit Heywood Bros. Catalogue, Oct. 1, 1878, may be taken as proved to have been issued on Oct. 1, 1878, and that said firm had on sale chairs like that represented by cuts No. 292, on page 8, and that Exhibit Chichester Chair No. 2 is a sample of chairs on sale by Heywood Bros. & Co.

as early as Oct. 1, 1878, and that the Pearl chairs, of which the last-named exhibit is a sample, were sold to Heywood Bros. & Co. by Chichester Bros. as early as Nov. 15, 1877.

WILLIAM A. COPELAND,
Special Examiner.

(Adjourned.)

Deposition of Frank F. Parker.

Direct examination by THOMAS H. DODGE, Esq., of counsel for defendants:

WORCESTER, *Sept.* 23*d*, 1886.

Int. 1. What is your name, age, residence, and occupation?

Ans. Frank F. Parker; 37; Gardner, Mass.; chair-maker.

Int. 2. How long have you been engaged in the manufacture of chairs, and where are you now engaged?

Ans. Some 17 or 18 years, and am now employed in Gardner for Derby & Co.

Int. 3. How long have you been employed by P. Derby & Co., and what is your position in the shop?

Ans. I should say some 10 or 12 years. My position is—well, I am employed as inventor and general mechanic about the business.

Int. 4. The complainants in this cause have offered evidence to the effect that Complainants' Exhibit Complainants' Chair, Complainants' Exhibit Model 1, and Complainants' Exhibit Model 2 are not different from the Kenna patented chair or the combina-
60 tions covered by the claims thereof. Please examine the exhibits to which your attention has been called, if you have not already done so, and also examine Defendants' Exhibit Caulier Patent, which patent bears date April 23, 1878, to F. Caulier, No. 202,788, and, on the supposition that said chairs do, as testified to by complainants' witnesses, contain the combinations described in the Kenna patent upon which suit is brought, state if you find the same combinations substantially described and represented in said Caulier patent, and give your reasons in brief for the answer that you may make.

(Objected to, first, because it seems absolutely clear to complainants' counsel that none of the complainants' witnesses have testified that the invention described in the Kenna patent and referred to in the first claim was in either of the said exhibits; that all the witnesses for the complainants have plainly testified that the invention described in the Kenna patent and referred to in the 2d claim was in those exhibits; secondly, because it seems plain to complainants' counsel that it is manifestly impossible for this witness to enlighten the court except by giving his own opinions, with his reasons for them, regardless of any purely hypothetical assumptions.

(Defendants' counsel states that he understood the scope of complainants' evidence as extending to the alleged infringement by the defendants of both claims in the Kenna patent upon which suit is

brought, and if the claim is only the alleged infringement of the 2d claim of the Kenna patent it will very much shorten the testimony and narrow the issue, and therefore he asks the complainants' counsel to state definitely if the issue is to be confined by the complainants to simply the alleged infringement of the 2d claim of the Kenna patent.

(Complainants' counsel does not know whether the defendants have or have not infringed the 1st claim of the Kenna patent, but he does know that no evidence in the case on behalf of the complainants tends to show any infringement of the 1st claim, and will not, of course, assert at the hearing that such evidence shows infringement of any but the 2d claim of the Kenna patent.

(Defendants' counsel states to the witness that in giving his answer he may refer to the construction of the chair exhibits as represented.)

Ans. I do find substantially the same combination. I find the supporting frame hinged to a chair frame at its lower front corner supported at the rear by a part of the swinging-chair frame by a spring catch.

61 Int. 5. Then, if I understand you correctly, it is your opinion, if these exhibits, to which your attention has been called embrace the combination described in the 2d claim of the Kenna patent, that such combination was fully anticipated and shown in the prior patent to F. Caulier to which your attention has also been called. Am I correct?

(Objected to as leading.)

Ans. I do; and you are correct.

Int. 6. Referring to the Kenna patent in suit and to the Caulier patent referred to in your last answer, state whether you find in said Caulier patent a chair frame corresponding to that marked B in the Kenna patent.

Ans. I find a frame corresponding to the frame marked B.

Int. 7. Do you find a supporting frame corresponding to the frame marked A in the Kenna patent?

Ans. I do.

Int. 8. Do you find said frames are hinged together at the front lower corner of the chair frame?

Ans. I find they are both hinged to the lower front corner.

Int. 9. Do you find in the Caulier patent that the seat frame when in an elevated position is held in place by a swinging support and spring catch?

Ans. I find that the base frame swings under the chair frame and supports it by a spring catch when the chair is raised from the lower position to the higher one.

Int. 10. Look at and examine Defendants' Exhibit Harris & Childs Patent, which patent is dated April 8, 1873, No. 137,610, and state whether or not you find in said patent a chair frame corresponding to the chair frame marked B in the Kenna patent and a

seat corresponding to the seat *b* on a base frame corresponding to the base frame marked *b* in the Kenna patent.

Ans. I find all of these frames in the Harris & Childs patent.

Int. 11. State how you find the chair frame and the supporting frame connected together in the Harris & Childs patent.

Ans. I find the chair frame is pivoted at its rear lower corner to the supporting frame and that it swings backward.

Int. 12. State whether or not said chair is adapted to be used as a high or low child's chair.

62 Ans. It is adapted for a high chair or a low chair.

Int. 13. Look at and examine Defendants' Exhibit Gleason Patent, which patent bears date May 20, 1879, No. 215,601, and state whether or not you find in said patent the elements described in the Kenna patent and embraced in the 2d claim thereof, provided the last element of said claim includes simply a hook or spring catch to hold the parts together when the Kenna chair is used as a high chair, giving your reasons for the answer you may make.

Ans. I find in the Gleason patent the same elements for the reason that the supporting frame and the chair frame are connected at its lower front corner; I also find the swinging supporting frame pivoted to the chair frame and connected to the base frame with a link.

Int. 14. State whether or not you find in said Gleason patent an arrangement by which the chair is used as a carriage when in its lower position corresponding substantially with the carriage chair shown in the Kenna patent.

Ans. I do, with this difference, that the supporting frame in the Gleason patent swings forward instead of to the rear, as in the Kenna patent.

(Adjourned.)

WORCESTER, *Sept.* 24, 1886.

Int. 15. Referring to the Gleason patent, state how the swinging support *h* is held in place when it is employed to hold the chair seat in its elevated position.

Ans. There are notches *i* in the lower ends of the bars *h* which rest upon the bar *a*, and that in turn rests on the frame E and also connected to the frame E by the links *g*, which holds the bars *h* in position when it is used as a high chair.

Int. 16. Look at the chair offered in evidence and marked Defendants' Exhibit Kenna Patented Chair and the model offered in evidence and marked Defendants' Exhibit Model of Kenna Patented Chair and compare the same with the chair shown and described in Complainants' Exhibit Kenna Patent in suit and state if you find said exhibits to have been made in accordance with the specification of said patent.

Ans. I have examined the chair and model, and I find them to be made in accordance with the specification of the Kenna patent.

63 Int. 17. State who made or who had charge of making said exhibits.

Ans. I made them without any help.

Int. 18. State about what proportion or scale Defendants' Exhibit Kenna Patented Chair is made as compared with the drawings in the Kenna patent.

Ans. The chair is made in the proportion of 8½ to 1 in the drawings.

Int. 19. Look at the drawing in figure 2 of the Kenna patent and state if the notch marked *g'* is not shown upon the wrong edge of the slotted bar G and if you have not placed the notch in the bars of the exhibits upon the opposite edge.

Ans. I have examined the drawing in figure 2, and I find that the notch *g'* is on the wrong edge of the slotted bar and I have made the exhibits with the notch on the opposite edge. I have made it as shown in figure 3 of the drawings.

Int. 20. State whether or not the chair described in the Kenna patent in suit would be a practical or safe chair for use as a high chair if the slotted bars marked G in the patent were dispensed with or omitted in its construction, giving the reasons for the answer you may make.

Ans. It would not be a practical or safe chair with the slotted bars G omitted, as they prevent the chair from swinging over forward, and the spring support F would be inoperative without them.

Int. 21. State whether or not you find the slotted bars G necessary elements in the combination of the supporting frame A, chair frame B, and bail E as described in the Kenna patent.

Ans. The slotted bars G are a necessary element, as the chair would be wholly inoperative as a high or low chair without them.

Int. 22. Examine Complainants' Exhibit Complainants' Chair, Complainants' Exhibit Model 1, and Complainants' Exhibit Model 2 and state whether you find that they are constructed like Defendants' Exhibit Kenna Patented Chair or the chair described in the Kenna patent in suit.

Ans. I have examined the exhibits mentioned, and I find that they are not constructed like the chair described in the Kenna patent or like Defendants' Exhibit Kenna Patented Chair.

Int. 23. State whether or not you find the device called
64 "the yielding rest or support F" in the 2d claim of the Kenna patent in either of Exhibits Complainants' Exhibit Complainants' Chair, Complainants' Model- 1 and 2.

Ans. I don't find the spring support F in either of them.

Int. 24. Do you find the yielding rest or support F described in the Kenna patent and being the last element specified by letter in the 2d claim of said Kenna patent to be a necessary element to the practical operation of said Kenna patented chair?

Ans. I do find it to be a necessary element.

Int. 25. Look at the chair shown and described in the patent to Franklin Chichester, July 18, 1879, for high chair and carriage and state whether or not you find at that date the art showed a chair seat or frame with two sets of wheels, the same as shown in the Kenna patent and Defendants' Exhibit Kenna Patented Chair.

(Objected to as leading.)

Ans. I have examined the Chichester patent. I find that the chair shown and described therein has two sets of wheels on the chair frame, the same as shown in the Kenna patent and also in Defendants' Exhibit Kenna Patented Chair.

Int. 26. Look at the patent granted to C. H. Barnes March 25, 1879—Defendants' Exhibit Barnes Patent—and state what you find the art to show at that date as to the use of a swinging bail or V-shaped device and a spring catch to be used in connection therewith for holding the two chair frames in position for a high chair.

(Objected to as leading; and it is urged upon the attention of defendants' counsel that the whole examination of this witness so far has been a mere waste of time, the questions and answers having been confined mainly to what is absolutely clear upon inspection of the patents, and which, in the opinion of complainants' counsel, will be far plainer to the court from inspection of the patents than from the deposition of this witness.)

Ans. I have examined the said Barnes patent, and I find a bail or V-shaped piece to be used as a push-handle in a low chair, and also to hold the two frames in position when used as a high chair by means of a latch, and that is claimed as such in the 2d claim.

Int. 27. How does the operation of the parts W and X in said Barnes patent compare with the operation of any parts shown in Defendants' Exhibit Chichester Chair No. 2?

(Same objection, it being obvious that that would be fully as clear to the court without evidence as with evidence.)

65 Ans. The parts W and X have the same operation as the bail in the Chichester patent, but the parts W and X are inverted in the Barnes chair. This was necessary because the supporting frame was detachable.

Int. 28. Look at the patent granted to G. M. Patten Sept. 3, 1878—Defendants' Exhibit Patten Patent—and state how you find the convertible chair therein shown and described to compare with the chair described in the Kenna patent and Defendants' Exhibit Kenna Patented Chair so far as the hinging of the chair frame to the base frame and supporting the chair frame upon wheels when used as a low chair or carriage are concerned.

Ans. I have examined the Patten patent. I find that the chair frame and base frame are hinged together at its lower front corner in substantially the same manner as in the Kenna patent, and that the wheels are suspended from the chair frame in substantially the same way, with the exception of the rear wheels, which are on a swinging frame attached to the seat frame and the rear legs of the chair.

Int. 29. Look at the chair now offered in evidence and marked Defendants' Exhibit Parker Chair, and state how it compares or corresponds with Complainants' Exhibit Defendants' Chair 3.

Ans. I have examined the chairs, and I find that they are alike

with the exception that the bail has been taken off of Complainants' Exhibit Defendants' Chair 3.

(Complainants' counsel admits that the chair Complainants' Exhibit Defendants' Chair 3 when put in evidence was in the same condition that it is in now.)

Int. 30. Examine Complainants' Exhibit Defendants' Chair 3, and state whether you find that the chair is made to receive a bail and what such evidence is.

Ans. I find that it was made to receive a bail. I find the stops on the side of the arms that the bail rests against when it is converted into a low chair; also the screw-holes in the front standards of the arms where the bail was evidently attached.

Int. 31. State who manufactures the chairs like Defendants' Exhibit Parker Chair and if they are ever made and put on the market without a bail, as shown in said exhibit.

Ans. They are made by P. Derby & Co., of Gardner. They
66 are never made and put on the market, to my knowledge, without a bail, as shown in said exhibit.

Int. 32. And do they not always have a shelf or table attachment the same as shown in Defendants' Exhibit Parker Chair when made and put on the market?

Ans. They do always have a shelf.

Int. 33. State whether or not the bail in Defendants' Exhibit Parker Chair is ever used for supporting the chair in its elevated position.

(Objected to as frivolous.)

Ans. It is not used to support the chair in its elevated position.

Int. 34. Does it perform any other function than that of a push-bail for the attendant to push the chair along when used as a carriage?

Ans. It has no other function than as a push-handle.

Int. 35. State whether or not you find the slotted bars marked G in the Kenna patent in suit in either of the exhibits Defendants' Exhibit Parker Chair, Complainants' Exhibits Defendants' Chairs 1, 2, and 3.

Ans. I have examined the exhibits, and I do not find the slotted bar G in any of said exhibits.

Int. 36. Examine said exhibits again and state whether or not you find "the yielding rest or support F" shown and described in said Kenna patent in either of said exhibit chairs referred to in your last answer.

Ans. I have examined the said exhibit, and I do not find "the yielding rest or support F" in any of them as in the Kenna patent.

Int. 37. Examine said exhibits and state whether or not you find in either of said exhibits the special combination described in the specification of the Kenna patent and particularly set forth and specified in the 2d claim of the Kenna patent in suit.

Ans. I do not find the combination specified and claimed in the 2d claim of the Kenna patent in any of the exhibits mentioned.

Cross-examination by J. E. MAYNADIER, Esq., of counsel for complainants:

Cross-int. 38. In which of the exhibits are both the front and rear legs of the high chair jointed, in your opinion? Please be careful and name them all, including the patents as well as chairs and models.

67 Ans. Well, Mr. Maynadier, I don't understand your question exactly. I don't know what you mean by jointed. Do you mean the legs hinged—cut in two and hinged together or hinged to some other part of the chair?

Cross-int. 39. Before answering your question I will ask you to take the Kenna patent and tell me what you think are the front legs of the Kenna chair when a high chair. Please give letters of reference.

Ans. The part marked *a'*.

Cross-int. 40. Don't you see that you are wrong about that, and that, in fact, the front legs of the Kenna chair when a high chair are the front posts of the main frame, which are marked *a'*, and the front legs of the chair frame—I mean the front posts of what is described in the patent as "the base frame *b*, on which the seat *b'* is supported"?

Ans. No; I don't think I am mistaken.

Cross-int. 41. You don't think, then, that the front legs of the Kenna chair when a high chair are jointed at D?

Ans. I think that the two frames are jointed at D, as much the rear leg as the front leg.

Cross-int. 42. You don't think that the front posts of the "base frame *b*" are parts of the front legs of the Kenna chair when a high chair, do you?

Ans. Well, I think that only the parts of the chair that reach the floor could properly be called the legs—that rest on the floor.

Cross-int. 43. You have not, I think, answered the question. Please do so.

Ans. They are the front legs of the chair frame.

Cross-int. 44. You now seem to me to avoid the question. Please answer it.

Ans. I think I have answered it.

(Cross-question 42 re-read.) They are the front legs of the chair frame. Being pivoted to the front legs of the supporting frame, they form the front legs of the chair when in a high position.

Cross-int. 45. Isn't it perfectly plain from Fig. 2 of the Kenna patent drawing that the front legs of the high chair are the front posts of the base frame *b* and the front posts of the supporting frame A?

68 Ans. Yes.

Cross-int. 46. Isn't it also perfectly plain that the part marked E in the Kenna patent drawing is a part of the rear legs of the high chair?

Ans. I shouldn't say it was.

Cross-int. 47. What do you think are the rear legs of the Kenna high chair?

Ans. The part marked *a*, figure 2.

Cross-int. 48. Isn't it perfectly plain that you are wholly wrong about that, and that the parts marked *a* are nothing but the rear legs of the supporting frame A, and that other parts must go with them to make the rear legs of the high chair, namely, the part marked E and the rear posts of the base frame *b*?

Ans. The rear part of the chair frame might be called a part of the rear leg of the chair, but the bail E is a device interposed between the leg *b* of the chair frame and the rear leg *a* of the supporting frame to keep the chair extended to its full height.

Cross-int. 49. Your answer seems to me perfectly plain, although expressed in a very roundabout manner, and means, as I believe, that the rear legs of the Kenna chair as shown in figure 2 are made up of the rear posts of the base frame *b*, the bail E, and the lower parts of the rear posts of the supporting frame A. Do I understand you right? If not, please state as briefly as you can what parts do make up the rear legs of the Kenna chair as shown in figure 2.

Ans. I didn't intend you should understand from my last answer that the bail E formed a part of the rear legs of the chair, for it is not a part of the rear legs.

The part *a* in figure 2 and the part *b* in chair frame B make the rear legs of the Kenna chair.

Cross-int. 50. You see, of course, do you not, that the parts *a* and *b* named by you do not support the rear of the seat by themselves?

Ans. I think the whole weight comes on the part *a*.

Cross-int. 51. That is not an answer. The question is repeated.

Ans. Yes; I see they do not.

Cross-int. 52. What parts do support the rear of the seat in the chair shown in the Kenna patent?

69 Ans. The part marked E, interposed between the two frames when the chair is in an upright position.

Cross-int. 53. Do you mean the parts *a* E *b* or not?

Ans. No; I do not.

Cross-int. 54. Isn't it perfectly plain that you must mean those parts and no other?

Ans. No; it isn't, because the frame is interposed between the part *a* and the spring support F on rod *f* in frame *b*.

Cross-int. 55. Then you mean that the rear of the seat in figure 2 in the Kenna patent is supported by the parts *a* E F *f* and the rear posts of the seat frame *b*, do you?

Ans. Yes, sir.

Cross-int. 56. As you seem to object to the use of the word "legs," I will now put the question in this way: Isn't it perfectly plain that the front of the seat frame *b'* in the Kenna patent is supported by the front posts of the base frame *b* and the front posts of the supporting frame A jointed at D, and that the rear of the seat frame *b'* is supported by the parts *a* E and the rear posts of the base frame *b*, the part E being jointed to the rear posts *a* and connected by rod *f* and spring catch F to the base frame *b*?

Ans. Yes; it is plain that those parts support the seat frame *b'*.

Cross-int. 57. I think, now, you can understand my cross-int. 38, so I repeat it, changing the expression " front and rear legs " so that the question as altered will read, In which of the exhibits are both the front supports and the rear supports of the seat of the high chair jointed, in your opinion? Please be careful and name them all, including the patents as well as chairs and models.

Ans. Exhibit Kenna Patent in suit, Exhibit Chichester Patent 259,368, Exhibit Chichester Patent 260,843, Exhibit Parker Patent 317,668.

Complainants' Exhibit Complainants' Chair,
" " Defendants' Chair 1,
" " Defendants' Chair 2,
" " Model 1, Model 2, and Model 3,
" " Defendants' Chair 3,
" " Complainants' Kenna Chair.

In Defendants' Exhibit Heywood Bros. & Co. Catalogue,
70 Oct. 1, 1878, cuts No. 294, Gem Folding Table, Carriage, and Crib; cuts No. 125 F, Continental Cane-Back Folding Table; No. 55 F, Douglas Folding Table; No. 57 F, Double-Top Cane Folding Table; No. 189, Gem Folding Table and Carriage; No. 292, Pearl Folding Table and Carriage; No. 295, Gem Folding Table and Carriage.

Defendants' Exhibit Chichester Patent 217,341,
" " Caulier Patent,
" " Harris & Childs Patent,
" " Patten Patent,
" " Barnes Patent,
" " French & Hunting Patent,
" " Swain Patent,
" " Gleason Patent,
" " Worch Patent,
" " Stevens Patent,
" " Chichester Chair No. 1,
" " Chichester Chair No. 2,
" " Model of Caulier Chair,
" " Kenna Patented Chair,
" " Model of Kenna Patented Chair,
" " Parker Chair.

Cross-int. 58. Why did you include in your answer chairs like the Caulier chair, in which both of the supports are rigid and not jointed; like the Pearl chair, in which the front support is rigid and not jointed, and the Patten chair, in which the rear support is rigid and not jointed?

Ans. You did not specify any particular form of joint, and I consider, under your broad question, that they are jointed.

Cross-int. 59. Which one of the exhibits, prior to the date of filing of the Kenna patent, July 28, 1879, do you believe shows a chair in which the front and rear supports of the seat or seat frame are both made of two or more parts pinned together so that one part can turn on the axis of the pin?

Ans. I don't find any.

Cross-int. 60. Is not the Caulier chair practically worthless, in your opinion, for obvious reasons?

Ans. It is not.

Cross-int. 61. What is your opinion, as a practical chair-
71 maker, as to the objections arising from the presence of the upper parts of the back legs in the Caulier chair between the arms when the chair is a low chair, and what do you think, also, as a practical man, about the weakening of the seat frame by the notches cut in it to let the back legs pass up over the seat frame?

Ans. About the back legs coming inside or outside of the arms is merely a matter of detail, and cutting the notches in the back of the seat could be avoided by proportioning the supporting frame so as to carry the back up outside of the seat.

Cross-int. 62. Do you agree with me, then, that the Caulier chair as shown in his patent 202,788 and in Exhibit Model of Caulier Chair is practically worthless?

Ans. I do not agree with you.

Cross-int. 63. Why did you depart from the drawings of the Kenna patent when you made the model marked Exhibit Model of Kenna Patented Chair? I mean particularly in not making the rear posts of the base frame *b* parallel with the front posts, and also in not allowing the bail E to come as far forward as it does in the drawings of the Kenna patent, and do not refer to the pattern of the back frame and the arm frames, for it is obviously immaterial whether they follow the same pattern or not.

Ans. I suppose that those legs was wholly immaterial, and the rest of the model was wholly in accordance with the drawing, with the exception of some little beading on the post and front round.

Cross-int. 64. Isn't it perfectly plain that the side pieces between the front and rear posts of the base frame *b* extend beyond and back of the bail E in the drawings and do not in your model?

Ans. The side pieces referred to appear to be slightly short in the model; they do not extend as far back as in the drawings.

Cross-int. 65. Why was that change made in your model?

Ans. It was unintentional—an oversight.

Cross-int. 66. Was not your model made on the theory that the spring catch F was something more than a spring catch to hold or support the bail in place, and that it had another function, namely, to serve as a spring support to the rear of the seat?

Ans. I made the model in accordance with the drawings and specifications. I supposed the spring catch had another
72 function besides supporting the bail in place, because it is claimed as such in the 2d claim of the Kenna patent.

Cross-int. 67. You mean that your model was made on that theory, don't you?

Ans. Yes, sir.

Cross-int. 68. And so was the Exhibit Kenna Patented Chair?

Ans. Yes.

Cross-int. 69. I observe the same shortening of the side pieces in the Exhibit Kenna Patented Chair. Do you see it also? I don't

mean the length of them, but their not projecting back of the bail—that is, the bail is not brought so far forward as it is in the drawings of the Kenna patent.

Ans. I find by measuring the drawing and the chair that the side pieces are nearly half an inch short on the back end on the scale that the chair is made on, and I do not think that the bail in the chair is out of position as shown in the drawings.

Cross-int. 70. You see, of course, that the upper end of the bail is hidden in figure 2 in the drawings of the Kenna patent by the back ends of the side pieces, and is not either in your model or in the full-sized chair. It seems to me plain that the reason for this difference is that you wanted to prevent the bail from coming directly under the rod *f* and thereby give a new function to the catch F. How far do you agree with me in what I have said?

Ans. The top end of the bail E not being wholly hidden by the side bars is accounted for by their being short, as I have stated, and I cannot agree with you on any of the other points you have mentioned.

Cross-int. 71. Yet when you made your model and full-sized chair from the Kenna patent you were of the opinion that the bail E did not rest directly under the rod *f* and you are still of that opinion, are you not?

Ans. I was and am.

Cross-int. 72. I see in your model of the Kenna patented chair that you made the pins *g'* so long that the side bars cannot get into place when the chair is low. Why is that?

Ans. It was on account of the limited amount of room I had on such a small-sized chair.

Cross-int. 73. You have spoken of the bail W and the spring catch X in the Barnes patent No. 213,610, and I have no
73 doubt you meant to testify that bail W and spring catch X were the same as the bail E and spring catch F in the Kenna patent. Please state, first, whether you meant that or not in substance, and, secondly, if you are willing to still say so on reflection.

(Defendants' counsel says he don't believe the witness testified to any such thing, and the reading of the interrogatory and answer will show that the belief of complainants' counsel is unfounded.)

(Complainants' counsel adds to the question :) I refer particularly to your answer to the 27th interrogatory.

Ans. I did not mean to convey that impression.

Redirect examination by THOMAS H. DODGE, Esq.:

Int. 74. You have stated that in making the chair Defendants' Exhibit Kenna Patented Chair and Defendants' Exhibit Model of Kenna Patented Chair that you worked according to the specification and drawings of the Kenna patent. Will you read from the specification of the Kenna patent and the claim or claims such portions as refer to the part marked F and its functions?

Ans. "A bail, E, is hinged to the lower rear corner of the frame A and swings forward under a spring catch, F, on a rod, *f*, at the lower

rear corner of the chair frame, to support the chair at the rear when in an elevated position, as shown in Fig. 1 of the drawings," and in the 2d claim "and the yielding rest or support F."

FRANK F. PARKER.

Attest: WILLIAM A. COPELAND,
Special Examiner.

74 *Deposition of George I. Alden.*

Direct examination by THOMAS H. DODGE, Esq., of counsel for defendants:

WORCESTER, *Sept.* 23, 1886.

Int. 1. What is your name, age, residence, and occupation?

Ans. George I. Alden; 43; Worcester, Mass.; teacher of applied mechanics at the Worcester County Free Institute.

Int. 2. State how long you have been thus engaged.

Ans. About 18 years.

Int. 3. State what practice or experience you have heretofore had which enables you to point out and describe differences and similarities in mechanical contrivances or machines.

Ans. Besides my experience at the institute in teaching the use and construction of machines, I have frequently been employed as expert in various patent suits during the last 15 years.

Int. 4. Please examine, if you have not already done so, the chairs Defendants' Exhibit Chichester Chair No. 1 and Defendants' Exhibit Chichester Chair No. 2 and Defendants' Exhibit Heywood Bros. & Co. Catalogue Oct. 1, 1878, particularly the cuts representing the Pearl, Gem, and Continental chairs on page 8; then examine Complainants' Exhibit Complainants' Chair and Complainants' Exhibits Model 1 and Model 2 and compare the same with the first-named exhibits, and then state what, if anything, you find in the last three named complainants' exhibits not found and substantially represented in said defendants' exhibits and give, in brief, reasons for the answer you may make.

Ans. I have examined the exhibits and cuts referred to in the question. I find in each of the chairs Chichester Chair No. 1 and Chichester Chair No. 2 a supporting frame, a chair frame, and a bail or supporting frame so combined as to enable the chair to be used as a high chair or a carriage chair.

I find substantially the same elements combined for the same purpose in the chairs shown in the cuts representing the Pearl chair, the Gem, and the Continental referred to in the question.

I find the same substantial elements combined for the same purpose in each of the complainants' exhibits referred to in the interrogatory.

75 In Chichester chairs No. 1 and No. 2 the chair frame is prevented from rotating too far forward by the base of the chair frame striking upon the tops of the front posts of the chair in connection with the hinge by which the chair frame is hinged to the main frame.

In Complainants' Exhibit Model 2 the chair frame is pivoted to the supporting frame at its lower front corner, and when the swinging frame is not in position to support the chair frame there is nothing to prevent the chair frame from swinging forward. When the swinging frame is in position to support the chair frame the latter is prevented from tipping forward by means of projections upon the inner side of the back posts of the chair frame which strike against the ends of the cross-bar of the swinging frame.

In Complainants' Exhibit Model 1 the chair frame is prevented from tipping forward by a spring catch attached upon the under side of the chair frame.

In Complainants' Exhibit Complainants' Chair this function of preventing the forward motion of the chair is performed by notches or slots in the upper end of the back posts of the base frame in connection with projecting pins in the lower ends of the back posts of the chair frame. This exhibit also shows a spring catch attached to the chair frame which engages with the upper part of the swinging frame, the catch being substantially like that shown in Complainants' Exhibit Model 1.

Aside from these slight differences in construction, the complainants' exhibits referred to are like the defendants' exhibits also referred to in the question—that is, they have the same primary elements combined in substantially the same way.

The differences in construction to which I have referred *to* do not constitute in complainants' exhibits any new or essential features in the chair; so that I do not find in the complainants' exhibits named anything which is not substantially found in said defendants' exhibits referred to.

Int. 5. Complainants' Exhibit Complainants' Chair has the various principal parts tagged, which tags are marked A, B, E, and F, the part A constituting the supporting frame, the part B the chair frame, the part E the swinging bail, and the part F the hook or catch, the said parts making a combination of chair frame,
76 seat frame, swinging bail, and a catch or hook. State whether or not you find substantially the same combination of devices or elements in Defendants' Exhibits Chichester Chair No. 1 and Chichester Chair No. 2, giving your reasons for the answer made.

Ans. I find in Defendants' Exhibits Chichester Chair No. 1 and No. 2 elements corresponding to those marked A, B, and E in Exhibit Complainants' Chair. I do not find in said Chichester chairs No. 1 and No. 2 the element marked F in Exhibit Complainants' Chair. Said complainants' chair has a spring catch similar to those found in Chichester chairs No. 1 and No. 2, and has in addition the element or catch marked F in said Exhibit Complainants' Chair.

Int. 6. Please examine the element marked F in Complainants' Exhibit Complainants' Chair, and also the spring piece which receives the bail when the chair is in its elevated position, and state whether or not you find that said bail piece has not evidently been broken off at some time since it was made and the swinging hook marked F added.

Ans. I could not say from examination whether the spring which

forms the stop for the bail had been broken or not, but do not presume the hook marked F has been added since the chair was made, because it performs an important function when the chair is used as a carriage.

Int. 7. Then, as a matter of fact, the function of the hook marked F is for the purpose of keeping the chair frame from tipping forward when the chair seat is lowered to be used as a carriage, is it not?

Ans. I so understand it.

Int. 8. Leaving said hook marked F wholly out of consideration, do you or do you not find substantially and almost identically the same combination of parts in Complainants' Exhibit Complainants' Chair that are found in Defendants' Exhibits Chichester Chair No. 1 and Chichester Chair No. 2?

(Objected to as leading.)

Ans. Under the conditions stated in the question I find the combination of elements referred to in the two Chichester chairs to be the same as and identical with the combination of elements found in Exhibit Complainants' Chair.

Regarding the part marked F in Exhibit Complainants' Chair as a button for holding the bail in place, I should regard the
77 combination of elements referred to as found in said Exhibit Complainants' Chair to be substantially the same as those found in the Defendants' Exhibits Chichester Chairs referred to.

Int. 9. Referring to Complainants' Exhibit Model No. 1, I find that the lower or supporting frame is marked A, the chair frame is marked B, and the swinging bail is marked E, all in pencil. I also find that the swinging bail is held in position when the chair is raised for a high chair by a metal spring catch which passes under a cross-piece in the bail. Including said metal spring catch in combination with the parts marked A, B, and E, state whether or not such combination is found in Defendants' Exhibits Chichester Chairs No 1. and No. 2.

Ans. The same combination is found in said Chichester Chairs No. 1 and No. 2.

Int. 10. I notice that a hook is found in this Exhibit Model 1 which seems to correspond with the loop or hook marked F in Complainants' Exhibit Complainants' Chair. State what you find the function of this hook in Exhibit Model 1 to be and whether it has anything to do with holding the swinging bail in place, either when the chair is used as a high chair or as a low chair.

Ans. The function of the hook referred to in Exhibit Model 1 is to hold the chair together when in its low position by engaging with an eye or staple in the lower front round of the supporting frame. It seems to have nothing to do with holding the swinging bail in place in either the high or low position of the chair, the means provided for that purpose in said Exhibit Model 1 being the same as found in said Exhibits Chichester Chairs No. 1 and No. 2.

Int. 11. Look at and examine Defendants' Exhibit Caulier Pat-

ent, which patent is dated April 23, 1878, No. 202,788, and state whether or not you find shown and described in said patent substantially the same combination of chair frame, supporting frame, and swinging-chair support as are found in the complainants' three exhibits to which your attention has been called in your previous examination, giving your reason for the answer you may make.

Ans. I find shown and described in said Caulier patent a base frame, a chair frame hinged to the supporting frame at its lower front corner and supported at its rear corners by means of
78 spring bolts or catches attached to the chair frame and engaging with the supporting frame. The chair shown in said patent I regard as embodying substantially the combination of elements referred to in the question as being found in complainants' three exhibits before mentioned, since in the operation of these elements we find the chair frame hinged to the supporting frame and supported upon it in substantially the same manner as in the complainants' three exhibits referred to.

Int. 12. Look at the model offered in evidence and marked Defendants' Exhibit Model of Caulier Chair, W. A. C., sp'l ex'r, and state whether or not you find said model to be a correct representation of the chair shown and described in the Caulier patent, with the exception of the tray M not shown in the model.

Ans. I have examined the said model and find it to correspond substantially with the said Caulier patent, with the exception noted.

Int. 13. If the chair frame in the Caulier patent was pivoted to the supporting frame instead of being hinged, state whether or not it would present substantially the same mechanism or device for preventing the chair frame tipping forward as is found in Complainants' Exhibit Complainants' Chair when the chair frame is raised to its highest position, leaving out of consideration the swinging bail in the Exhibit Complainants' Chair.

Ans. I think the devices referred to in the said Caulier patent are substantially the same for the purpose mentioned as those contained in Exhibit Complainants' Chair.

Int. 14. State whether or not it would make any difference in the operation of the chair if the push-handle or swinging bail marked N in the Caulier patent was made long enough to swing under the back of the chair frame as the bail swings under the chair frame in Complainants' Exhibit Complainants' Chair when the chair frame is elevated.

Ans. I do not see that it would make any substantial difference.

Int. 15. State whether or not it would make any substantial difference or, in your opinion, require anything more than ordinary mechanical skill or taste to leave a portion of the front legs of the Caulier chair attached to the chair frame and hinge the chair frame a little lower down, the rear legs, of course, being modified accordingly.

Ans. The chair frame being once hinged to the supporting frame at or near its lower front corners, it would easily be seen by
79 any one operating the chair that the effect of changing the position of the hinges as indicated in the question would be

simply to change the position of the chair frame in its lowered position in such a manner as to tend to make the carriage shorter and more compact, and, therefore, it would seem to me that the point at which the chair frame might be hinged to the supporting frame would be simply a matter of choice which a mechanic might exercise, and that the difference between the Caulier chair as represented in the said model and hinged as described in the question would be simply a difference of construction and not an essential or substantial difference in the combination.

Int. 16. Look at and examine the early patent of Harris & Childs, dated April 8th, 1873, for an improvement in children's chairs—Defendants' Exhibits Harris & Childs Patent—and state whether or not you find shown and described in said patent an illustration of the hinging of the chair frame and supporting frame referred to in your last answer, giving your reasons for the answer you may make.

Ans. I find represented in said Harris & Childs patent a chair in which the chair frame is pivoted to the supporting frame at a point considerably below the chair seat. The pivots, however, are at the lower back corners of the chair frame; but this method of pivoting illustrates substantially the manner of pivoting I have referred to in my last answer, as it shows that the pivoting of the chair frame at a point considerably below the chair seat had been adopted at the time of the issue of said Harris & Childs patent.

Int. 17. Comparing the mode of pivoting the chair frame in Complainants' Exhibit Complainants' Chair with the mode shown and described in the Exhibit Harris & Childs patent, state how it compares both as regards the mode of pivoting and distance from the chair seat.

Ans. The mode of pivoting in each of the two cases referred to in the question is substantially the same whether the chair frame is pivoted at its lower front corner or lower rear corner, and as to the distance of the pivot from the chair seat in the two cases mentioned I should say these distances relatively to the heights of the respective chairs are about the same.

Int. 18. Look at and examine Defendants' Exhibit Gleason Patent and state how you find the chair therein shown and described constructed so that it is adapted for use as a high chair and as a
80 low or carriage chair and whether or not you find the swinging support for the chair frame when in its elevated position; and, if yea, how such support differs from the swinging support or bail in Complainants' Exhibit Complainants' Chair.

Ans. The chair shown in said Gleason patent combines a chair frame and a supporting frame by means of two arms or levers, one pivoted to the supporting frame and the other to the chair frame, and also by means of two bows or springs. One of the arms or levers just mentioned has its upper end pivoted to the chair seat, and when the chair is in its upright position the other end of this arm or lever is notched to form a rest at its lower end in such a manner that this lever forms a swinging support for the chair frame when in its elevated position. This support differs from the bail on Exhibit Complainants' Chair, when such bail is used as a support,

mainly in the position which it occupies relatively to the chair frame.

Int. 19. State whether or not it makes any difference whether the swinging support or bail is hinged or pivoted to the chair frame with its free end resting against its proper catch in the supporting frame or hinged to the supporting frame and swinging up to support the chair frame, and state what letter the swinging support in the Gleason patent is marked.

Ans. It makes no substantial difference to which part of the chair the swinging support is pivoted. This support in the Gleason patent is marked with the letter *h*.

Int. 20. State how said swinging support *h* is held in place to hold the chair frame in its elevated position, and if the device is lettered please state what the letter is.

(Objected to because the function of the part *h* is apparently to hold the cross-rod *a* of the part D in place in the notches *b* on the upper rear portion of the part E.)

Ans. The said piece *h* is held in place by means of the notch in its lower end, marked *i*, which rests upon a cross-rod, *a*.

(Adjourned.)

WORCESTER, *Sept.* 25, 1886.

Int. 21. Look at and examine Defendants' Exhibit Kenna Patented Chair and compare the same with the chair shown and described in the Complainants' Exhibit Kenna Patent in suit
81 and state whether or not you find said chair—Defendants' Exhibit Kenna Patented Chair—to have been made substantially in accordance with the chair shown and described in said Kenna patent, the table marked M being left out of consideration.

Ans. I have examined the exhibits referred to in the question, and I find that Defendants' Exhibit Kenna Patented Chair is made substantially in accordance with the specifications and drawings of the said Kenna patent in suit, except the table M, which is left off in the said Defendants' Exhibit Kenna Patented Chair.

Int. 22. Answer the same question as to Defendants' Exhibit Model of Kenna Patented Chair.

Ans. I find the said model of Kenna patented chair also to be made in accordance with the specifications and drawings of the said Kenna patent in suit.

In both the Defendants' Exhibits Kenna Patented Chair and Model of Kenna Patented Chair the notches near the upper end of the slotted bars are upon the opposite edges from the notch *g* shown in the figure 2 of the drawings of the said Kenna patent in suit. From the functions which these notches are intended to perform I judge that in this respect a mistake was made in the drawings referred to in the said Kenna patent in suit.

Int. 23. With the view of ascertaining the state of the art at the date of the filing (July 28, 1879) of the application upon which said Kenna patent was granted, will you look at and examine Defend-

ants' Exhibit File of Kenna Patent and state what you find said Kenna claimed in said application as first filed?

Ans. The original claims in the application of Joseph W. Kenna, filed July 28, 1879, for "an improvement in children's chairs and carriages" are as follows:

1. In a combined chair and carriage, an upright supporting frame, A, in combination with a chair frame hinged thereto at its lower front or rear corners, whereby the two parts may be adjusted in relation to each other, substantially as and for the purpose set forth.

2. The supporting frame A in combination with the chair frame hinged thereto at its lower front corners and the movable support E, substantially as described.

3. The supporting frame A, composed of the front standards *á* and the rear standards *a*, bent as described and joined at their
82 upper ends to the front standards with suitable braces connecting the two, whereby the frame is adapted to adjustment for chair or carriage, substantially as shown and described.

4. The frame A in combination with the chair frame B, pivoted thereto as described, the swinging slotted bars G and pins H on the chair, substantially as described.

5. The chair frame B in combination with the spring catch J and tilting frame A, substantially as described.

6. The chair B, provided with wheels L, in combination with the tilting frame A, pivoted at its upper end to one edge of the chair frame and constructed and arranged so that where (when) the tilting frame is turned down into a horizontal position the chair wheels will project below the latter so that the structure will rest thereon, substantially as described.

7. The frame A in combination with the bail E, chair frame B, pivoted at its lower front corners to the frame A, and the yielding rest or support F, substantially as described.

8. The chair in combination with the table M, pivoted to its arms and provided with springs *m* for holding it in a horizontal position, substantially as described.

Int. 24. State what you find to have been the decision of the Patent Office as to the novelty and patentability of the claims first filed by said Kenna as the same appears in said Defendants' Exhibit File of Kenna Patent.

Ans. I have examined said file of Kenna patent, and I find the following letter:

Room No. 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Sept. 23rd*, 1879.

Joseph W. Kenna,
Care Coburn and Thatcher,
Ashland Block,
Chicago Ills.

No. 9282.
Child's Chair and Carriage.
July 28, 1879.

The 1st claim is bad in form, being alternative in expression, and

could not be allowed for the further reason that the frame A is not shown pivoted at rear corner of the chair frame.

83 The 5th claim is incomplete.

The claims are met as follows, viz:

The 1st and 2nd in patents to F. Caulier, 202,788, Apr. 23, 1878, and Harris & Childs, 137,610, Apr. 8, 1873; the 3rd in that to D. Gleason, 215,601, May 20, 1879; the 5th in Caulier, hereinbefore cited; the 6th in that to F. Chichester, 217,341, July 8, 1879, and the 8th in that to J. F. Downing, 138,620, May 6, 1873 (all the references in class "nursery chairs").

The application is rejected.

L. M. E. COOKE, *Examiner.*

S. BRASHEARS,
Ass't Ex'm'r.

Int. 25. How many claims of the original eight and which do you find the office did not object to at said first examination?

Ans. Two, the 4th and the 7th, as follows:

4. The frame A in combination with the chair frame B, pivoted thereto as described, the swinging slotted bars G and pins H on the chair, substantially as described.

7. The frame A in combination with the bail E, chair frame B, pivoted at its lower front corners to the frame A, and the yielding rest or support F, substantially as described.

Int. 26. State what you find the action of the applicant to have been in view of such official action on the part of the Patent Office.

Ans. I find the following letter:

To the Com. of Patents.

SIR: In the matter of my application for patent for children's chair and carriage, filed July 28, 1879—

Erase claims 1st, 2nd, 3rd, 5th, 6th, and 8th and renumber claims 4th and 7th 1st and 2nd and insert as additional claims—

3rd. The combination of the supporting frame A, composed of front standards *d* (and) rear standards *a*, the chair frame B, pivoted thereto at its lower front corner, and the curved supporting bale pivoted at the lower end of the said standards *a*, substantially as described and shown.

4th. The combination with the slotted bars *g* (G) and spring catch J of the pin K on the tilting chair frame, the parts
84 being automatically connected when said tilting frame is swung down, substantially as and for the purposes set forth.

Very respectfully, JOSEPH W. KENNA,
By ELLIS SPEAR, *Att'y.*

Washington, D. C., Oct. 30th, 1879.

From the above official letter it appears that the applicant gave up original claims 1, 2, 3, 5, 6, and 8 and renumbered the remaining claims, 4 and 7, making them respectively 1 and 2, and inserted two additional claims, 3 and 4, shown in the above letter.

Int. 27. State what you find to have been the action of the Patent Office on the application as thus amended.

Ans. The office sent the patentee the following letter:

Room No. 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Nov. 29th*, 1879.

Joseph W. Kenna,
Care Ellis Spear,
Present.

No. 9282.
Child's Chair and Carriage.
July 28, 1879.

Examined as amended. The 4th claim is to a simple latch device, as shown in the patents to Caulier & Downing, as before cited, and must therefore be rejected.

L. M. E. COOKE, *Examiner.*

S. BRASHEARS,
Ass't Ex'm'r.

Int. 28. State what you find to have been the action of the applicant Kenna in view of such official letter.

Ans. Said Kenna amended by erasing said 4th claim, as shown in the following letter:

To the Com. of Patents.

SIR: In the matter of my application for patent for children's chair & carriage, filed July 28th, 1879—

I amend by erasing the 4th claim.

Respectfully submitted.

JOSEPH W. KENNA,
By ELLIS SPEAR, *Att'y.*

Washington, D. C., Dec. 3rd, 1879.

85 Int. 29. State what you find to have been the next action of the Patent Office on such application as thus amended.

Ans. The office rejected the said 3rd claim upon reference to the chair shown in Heywood Bros.' catalogue known as the Pearl and numbered 292. The letter is as follows:

Room No. 105.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Dec. 12th*, 1879.

Joseph W. Kenna,
Care Ellis Spear,
Present.

No. 9282.
Child's Chair & Carriage.
July 28, 1879.

Since last official citation and the amendment of the 3rd inst. it has been discovered that the 3rd claim is met in the chair shown in Heywood Bros.' catalogue known as the "Pearl" and numbered 292. Said claim must therefore be rejected.

L. M. E. COOKE,
Examiner.

S. BRASHEARS,
Ass't Exam'r.

Int. 30. State what you further find to have been the action of the applicant in view of the rejection of said amended 3rd claim.

Ans. He further amended his application by erasing the said 3rd claim, as shown in the following communication:

To the Com. of Patents.

SIR: I hereby amend my application for patent for children's chair & carriage, filed July 28th, 1879, by erasing the 3rd claim.

Respectfully submitted, JOSEPH W. KENNA,
By ELLIS SPEAR, *Att'y.*

Washington, D. C., Dec. 17th, 1879.

Int. 31. From this examination of the file-wrapper and contents of the Kenna patent in suit and of the references cited—Defendants' Exhibits Caulier Patent, Harris & Childs Patent, Gleason Patent, Chichester Patent, No. 217,341, and Heywood Bros. & Co. Catalogue, what do you find to have been new and patentable according to the action of the Patent Office and the applicant Kenna, referring also to Complainants' Exhibit Kenna Patent in suit, giving the reasons for the answer you may make?

86

Ans. From the file-wrapper and the references above referred to, including the Kenna patent in suit, I find that the only combinations new and patentable in the chair described by Kenna in his original application or in subsequent amendments are those described in the 4th and 7th original claims, said claims being claims 1 and 2 of the Kenna patent in suit. The elements of novelty in said 1st claim of the Kenna patent in suit are the slotted bars G and pins H, said bars being pivoted at their lower ends to the rear standards of the supporting frame.

In the 2nd claim of said Kenna patent in suit the single new element mentioned is "the yielding rest or support F." The combination recited in this said 2nd claim to be "substantially as described" must virtually include the slotted bars before referred to, as the combination would not be practically operative without them, there being nothing else to perform one of the functions for which these slotted bars are introduced, namely, to "hold the chair from turning up from its proper position" when the chair frame is elevated. The only thing which made the support F new and thus entitled the combination specified in said 2nd claim to the distinction of novelty was the fact that it was a yielding rest or support for the chair frame; for it appears that the Patent Office held, and the patentee consented to the same by crossing out claim 1, that an upright supporting frame combined with a chair frame hinged thereto at its lower front or rear corners was not new, but was found in the Caulier and in the Harris & Childs patents above cited. Likewise the combination of the supporting frame, chair frame, and movable support was found and appeared in the said Caulier and Harris & Childs patents. Now these three elements are all that are recited in the said 2nd claim of the Kenna patent in suit except the yielding rest or support F, and this element F must be a suitable support for the

chair frame and not simply a spring catch, as is clear from
87 the fact that the 4th claim of the amended original application of said Kenna was rejected on the ground that it was to a simple latch device and was found in the patents to Caulier and Downing.

It is further shown that the combination of the supporting frame A, the chair frame B, pivoted thereto at its lower front corners, and the curved supporting bail shown in said Kenna's original application, and which constitute three of the four elements of the 2nd claim of the Kenna patent in suit, was not new, the said applicant, Kenna, having acquiesced in the decision of the Patent Office that such combination was shown in Heywood Bros. & Co. catalogue, in the chair called the "Pearl," therein represented, No. 292; in consequence of which the applicant, Kenna, erased the 3rd claim of his amended application.

It further appears from the ruling of the Patent Office that there was no novelty in the form or construction of the supporting frame A shown in the Kenna patent, substantially the same construction having been found and now clearly appearing in the Gleason patent above referred it. Hence the rejection of the 3rd claim of said Kenna's original application. It would seem, therefore, that in the judgment of the Patent Office and by the admission of the applicant, Kenna, that there is nothing left to constitute the combination specified in the 2nd claim of said Kenna patent in suit new and patentable except "the yielding rest or support F," and the state of the art disclosed by the facts and exhibits above referred to corroborate this conclusion.

Int. 32. Look at and examine Defendants' Exhibit Barnes Patent and state whether or not you find therein shown and described a curved swinging bail in combination with a spring catch, substantially like the swing bail and spring catch, so far as said swinging bail and spring catch are concerned, as are found in Defendants' Exhibit Chichester Chairs No. 1 and No. 2, when the chair frame is elevated.

Ans. I have examined the said Exhibit Barnes Patent and I find therein represented a swinging bail and a spring catch combined in substantially the same manner as the bail and catch shown in said Defendants' Exhibits Chichester Chairs No. 1 and No. 2. The object of the spring catch in the said Exhibit Barnes Patent is to hold the bail in place when the chair frame is in its elevated position,
but in the chair shown in the said Barnes patent the bail is
88 turned downward, or the reverse of the position which it occupies in said Exhibits Chichester Chairs No. 1 and No. 2 when the chair frame is elevated.

Int. 33. Look at and examine Defendants' Exhibit Patten Patent, dated Sept. 3, 1878, for children's convertible chair, and state what, if anything, you find described and shown in said patent confirmatory of the state of the art as detailed by you prior to the date of the application for the Kenna patent in suit.

Ans. I find represented in said Exhibit Patten Patent a chair frame hinged to the supporting frame at the lower front corners, the

points of hinging being at a considerable distance below the chair seat. So far as the front part of the chair frame is concerned, it is quite like the chair frame shown in the Kenna patent in suit, having a base frame composed of standards which project downward underneath the chair seat. This shows that the state of the art was such at the date of the said Patten patent that the hinging of the chair frame to the supporting frame at a point considerably below the chair seat was not new.

Int. 34. Do you find from the same exhibit that the chair frame when lowered for a carriage was also supported by four wheels, substantially like the chair frame in the Kenna patent in suit, leaving out of consideration the special contrivance or mechanism employed for supporting the rear wheels in the Patten chair?

Ans. I find said Patten chair, where used as a carriage, is supported by four wheels, the small or forward pair of wheels having direct connection with the chair frame, and the back part of the chair seat having also a direct support to the axle of the rear wheels. I should say that said Patten chair, when used as a carriage, is supported on four wheels, substantially in the same manner as the chair shown in the Kenna patent in suit.

Int. 35. State whether or not, in your opinion, it is a mere matter of ordinary mechanical skill and taste, and was at the time of filing of the application of the Kenna patent in suit, in view of the state of the art as it then existed, at what point or distance the hinging of the chair frame to the supporting frame should be below the chair seat.

Ans. The state of the art as it existed prior to the date of the filing of the application of the Kenna patent shows that the hinging of the chair frame to the supporting frame had been accom-
89 plished, first, by hinging the chair frame to the front posts of the supporting frame directly underneath the chair seat, as shown in Defendants' Exhibits Chichester Chair No. 1 and Chichester Chair No. 2; second, by hinging the chair frame to the supporting frame at points considerably below the front corners of the chair seat, as shown in Defendants' Exhibit Patten Patent before referred to; third, by hinging the chair frame to the supporting frame at the rear corners of the chair seat and directly under it, as shown also in Defendants' Exhibit Patten Patent; and, fourth, by hinging the chair frame to the supporting frame at a considerable distance below the back corners of the chair seat, as shown in Defendants' Exhibit Harris & Childs Patent.

Therefore it would seem that the state of the art at the date of the filing of the Kenna application was such as to make it difficult to choose any substantially new point at which to locate the hinges and that their location was merely a matter of taste or convenience.

Int. 36. Look at and examine the chair now offered in evidence and marked Defendants' Exhibit Illustrative Chair and state whether or not you find from such chair that it makes any real difference in the principle of construction and in the operation of the chair whether the hinging is such as shown in Defendants' Exhibits Chi-

chester Chairs No. 1 and No. 2 or such as shown in Complainants' Exhibit Defendants' Chair 1.

Ans. The Defendants' Exhibit Illustrative Chair very clearly brings out the fact that there is no difference in the principle of construction or the mode of operation between Defendants' Exhibits Chichester Chairs No. 1 and No. 2 and Complainants' Exhibit Defendants' Chair 1 so far as the manner of hinging is concerned.

Int. 37. Look at and examine the specification of the Kenna patent and state whether or not you find the invention described in the said Kenna specification and embraced in the combination set forth and specified in the 2nd claim of the Kenna patent in suit in either of the chairs Complainants' Exhibits Defendants' Chairs 1 and 2 and the chair Defendants' Exhibit Parker Chair, and give in brief the reasons for the answer which you may make.

Ans. I do not find in either of the three exhibits mentioned in the question the combination set forth in the specification and described in the 2nd claim of the said Kenna patent in suit.

I do not find it in Complainants' Exhibit Defendants' Chair
90 1 because, while this chair shows substantially the frame A in combination with the bail E and chair frame B pivoted at its lower front corners to the frame A, it does not have the yielding rest or support F referred to in the 2nd claim of the said Kenna patent and constituting, as I have before stated, the only feature or element which gives novelty to the combination in said 2nd claim. In Complainants' Exhibit Defendants' Chair 1 the swinging bail passes under the rear of the chair seat, the latter resting solidly upon the former, there being nothing, so far as I can see, to constitute a yielding rest or support such as is mentioned in the 2nd claim of the said Kenna patent.

I do not find it in Complainants' Exhibit Defendants' Chair 2 for substantially the reasons just given with regard to Complainants' Exhibit Defendants' Chair 1. In said Complainants' Exhibit Defendants' Chair 2 there is a small block of wood fastened to the lower back side of the chair seat; the swinging bail passes underneath the rear of the chair seat and the latter is supported through this block of wood which rests upon the upper part of the bail when the chair is in its upright position. This block of wood cannot constitute the element referred to in the 2nd claim of the Kenna patent in suit as the yielding rest or support F for the reasons, first, that it is not in any sense a yielding support; and, second, that if substituted for the yielding rest or support F in the Kenna patent it would not in my opinion give novelty or patentability to the combination.

I do not find it in Defendants' Exhibit Parker Chair for the reason that, while this chair presents the combination of the chair frame, supporting frame, and a bail, this, like the other exhibits I have referred to, does not have the yielding rest or support F which constitutes an essential element of the 2nd claim of the said Kenna patent, but the swinging support is attached to the lower rear corner of the chair frame by a pair of short links, and also to the lower back round of the supporting frame by a pair of longer links, the

latter acting in combination with the swinging frame as a toggle joint to hold the swinging frame in place when the chair frame is in its elevated position.

I do not therefore find in either of the three exhibits mentioned in the question the combination set forth in the specification and specifically described in the 2nd claim of the said Kenna patent in suit.

(Adjourned.)

91 WORCESTER, *Sept.* 29, 1886.

This conclusion is amply justified by the fact which I have emphasized, namely, that each of the three exhibits, Complainants' Exhibits Defendants' Chairs 1 and 2 and Defendants' Exhibit Parker Chair, lacks the yielding rest or support mentioned in the 2nd claim of the Kenna patent in suit.

There is another consideration to which I have alluded in a previous answer which is, perhaps, equally important, namely, that the said 2d claim of the Kenna patent virtually involves the element referred to as the slotted bars G in said Kenna patent, for the reason, as before stated, that the combination of said 2d claim would not be operative or practical without the slotted bars either when the chair frame is in its elevated or its lowered position, since in the elevated position of the chair frame the slotted bars prevent the chair from tipping forward, and in the lowered position of the chair frame these slotted bars, by means of notches in their ends which engage with pins in the front posts of the supporting frame, prevent this supporting frame from resting upon the ground or floor when the chair frame is in its lowered position.

Moreover, in the Defendants' Exhibit Parker Chair the swinging frame to which I have alluded, although it supports the rear of the chair frame, is not the element described as the bail E in the Kenna patent in suit, as it does not perform one of the important functions for which the said bail E must be used in the chair shown in the said Kenna patent, namely, that of the pushing bail or handle. In Defendants' Exhibit Parker Chair a pushing bail is provided which is pivoted to the front posts of the chair frame, but which is not in any way used as a support for the chair frame in its elevated position.

Int. 38. If the swinging frame and its toggle connections were entirely removed from Defendants' Exhibit Parker Chair, could the chair frame tip over forward when in its elevated position; and, if not, why not?

Ans. It could not, for the reason that it is so hinged to the supporting frame that the hinge joint will not allow the forward motion of the chair frame beyond its proper elevated position.

Int. 39. Look at and examine Defendants' Exhibit Stevens Patent, also the testimony of Asher B. Stevens, the patentee, examined in the part of the complainants, printed record, from and including cross-interrogatory 19, p. 18, to and including cross-interrogatory 23 and answer thereto, page 19, and state whether or

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not the conclusion reached by you that Defendants' Exhibit Parker Chair does not infringe the 2d claim of the Kenna patent is confirmed by said Stevens' testimony, giving your reasons for the answer you may make.

Ans. I have examined the said Defendants' Exhibit Stevens Patent and also the testimony of Asher B. Stevens from cross-interrogatory 19 to cross-interrogatory 23 and answer. I think said testimony, as I understand it, does corroborate my conclusion which I reached, that Defendants' Exhibit Parker Chair does not infringe the 2d claim of the Kenna patent in suit. Said Stevens testifies that he conceived the chair and made a model of one side in 1876, which chair he afterward patented under date of Oct. 7, 1879, application filed April 16, 1879, Defendants' Exhibit Stevens Patent being a copy of the same.

In answer to cross-interrogatory 22, which was as follows, "Was there any substantial difference between the device for supporting the chair frame in that and what is shown in Compl'nts' Exhibit Complainants' Chair Frame? And, if yea, state just what difference," said Stevens testifies substantially that supporting the chair frame in its high position by a link which stood nearly perpendicular to the base, instead of supporting the chair frame by pivoting it directly to the supporting frame as in Complainants' Exhibit Complainants' Chair, constituted a marked difference between the supporting device shown in Defendants' Exhibit Stevens Patent and that shown in said Complainants' Exhibit Complainants' Chair.

In Defendants' Exhibit Parker Chair the rear part of the chair frame is supported by a link to which the swinging frame of said Parker chair is pivoted, the combination constituting a supporting device for the rear of the chair frame in said Parker chair similar to that used by said Stevens and shown in Defendants' Exhibit Stevens Patent for supporting the front part of the chair frame shown in said patent.

Said Stevens also further testified, in answer to the same cross-interrogatory 22, as follows: "The supporting frame E in Complainants' Exhibit Complainants' Chair is pivoted to the upright
93 base, but this chair of mine differed, in that this frame E was pivoted to links also, and allowed the frame E or supporting frame to move out and under to form rockers upon which the chair rocked."

In Defendants' Exhibit Parker Chair I find the swinging frame pivoted to links and not pivoted to the upright base, as is the supporting frame in Complainants' Exhibit Complainants' Chair. Since, then, I find in Defendants' Exhibit Parker Chair substantially the same differences between it and Complainants' Exhibit Complainants' Chair as the said Stevens found between his chair shown in Defendants' Exhibit Stevens Patent and Complainants' Exhibit Complainants' Chair in respect to the supporting devices referred to by said Stevens in his answer to cross-interrogatory 22, I conclude that his views as stated in said answer corroborate my conclusion that Defendants' Exhibit Parker Chair does not infringe the 2d claim of said Kenna patent in suit.

Int. 40. Look at and examine Complainants' Exhibit Model 3 and state what, if anything, you find therein confirmatory of your conclusions that the chair Defendants' Exhibit Parker Chair does not infringe the 2d claim of the Kenna patent in suit, giving briefly the reasons for the answer you may make.

Ans. Complainants' Exhibit Model 3 has for one of the rear supports of the chair frame a device similar to that found in Defendants' Exhibit Parker Chair, while the other side has slotted bars and a pin near the rear lower corner of the chair frame capable of moving in the slots in the slotted bars. When the chair frame is in its elevated position it is amply and securely supported by the device representing the rear support of Defendants' Exhibit Parker Chair without the aid of the swinging support or bail in Complainants' Exhibit Model 3. With only the device having the slotted bars shown in Complainants' Exhibit Model 3 the chair frame has no support in its elevated position except by means of the swinging frame in said exhibit. This statement is made regarding the slotted bars in said Complainants' Exhibit Model 3 to be like the slotted bars G of the Kenna patent in suit. I find, however, that the slotted bars in said model have short slots nearly at right angles with the main slot shown in the Kenna patent. The pin in the rear lower corner of the chair frame entering this small slot that I have referred
94 to might give a temporary support to the rear of the chair frame, but even with this slot or device, which is not found in the Kenna patent in suit, the rear part of the chair frame would have no adequate, safe, or practical supporting device without the use of the swinging frame described as the bail E in the 2d claim of the said Kenna patent in suit.

These important differences in the supporting devices compared in Complainants' Exhibit Model 3 confirm my conclusion that Defendants' Exhibit Parker Chair does not infringe Complainants' Exhibit Kenna Patent in suit.

Int. 41. Look at figure 6 in the drawings of the Exhibit Stevens Patent, dated Oct. 7, 1879, and compare said drawing with the description contained in the last paragraph on page 2 of the specification before the claims and state whether or not the constructor of that model, Exhibit Model 3, did not follow the Stevens patent in making those cross-slots, giving the reasons for the answer you may make.

Ans. The cross-slots in the slotted bars shown in Complainants' Exhibit Model 3 are certainly very similar to that shown in figure 6 referred to in the question and described as "the short portions 13" in the paragraph of the patent referred to in the question. It is perhaps a plausible theory that the constructor of the said model worked from figure 6 of the said drawings in making the cross-slots shown in Defendants' Exhibit Model 3.

Int. 42. Examine Defendants' Exhibit Chichester Patents Nos. 259,368 and 260,843 and Defendants' Exhibit Parker Patent and compare the same with Complainants' Exhibit Defendants' Chair 1, Complainants' Exhibit Defendants' Chair 2, and Defendants' Exhibit Parker Chair, and state whether or not you find said chair

exhibits described and substantially patented in and by said patents respectively.

Ans. I have examined the Complainants' Exhibit Defendants' Chair 1 and compared the same with Defendants' Exhibit Chichester Patent 259,368 and I find said chair to agree substantially in construction with the chair described in said patent. In said defendants' chair 1, in place of the spring catch *b* of the Chichester
95 patent, I find a button screwed to the rear of the chair seat for the purpose of holding the supporting bail in place when the chair frame is in its elevated position. This is the only difference I note in the said Complainants' Exhibit Defendants' Chair 1 and the patent referred to, and as the said button is substantially equivalent to the catch *b*, for the purpose of holding the bail in position, I should say that said chair is substantially described and patented in said Chichester patent 259,368.

Comparing Complainants' Exhibit Defendants' Chair 2 with the chair described in Defendants' Exhibit Chichester Patent 260,843, I note several differences in the construction of said chair from that shown and described in said patent, but in its main elements I find the said chair to agree substantially with that shown and described in the Chichester patent 260,843.

In reference to Defendants' Exhibit Parker Chair I find it to be made substantially in agreement with Defendants' Exhibit Parker Patent. In said Exhibit Parker Chair the axle or pivot which constitutes the axle of the forward wheels, and also the pivot upon which the chair frame turns, relatively to the supporting frame, is a little to the rear of the front posts instead of being brought on the center line of these posts as shown in the patent and constituting in said chair exhibit a hinged joint.

Cross-examination by J. E. MAYNADIER, Esq., of counsel for complainants:

Cross-int. 43. Do you agree with me that Exhibits Complainants' Chair, Complainants' Kenna Chair, and Defendants' Chair 1, 2, and 3 are alike in that in each both the front and rear legs are composed of rigid pieces hinged together?

Ans. So far as the exhibits may be said to have front and rear legs they are composed of rigid pieces, and, as I understand it, are hinged or pivoted together at points where their relative motions are only that of rotation.

Cross-int. 44. Your answer is substantially in the affirmative, is it not?

Ans. I should be better able to give an answer to this question if it was specified what is included in the term chair legs, whether referring to the supporting frame or to the whole chair.

96 Cross-int. 45. I will change the question, then, as follows. Do you agree with me that in the five exhibits named the seat is supported at both front and rear, when used as a high chair, by rigid pieces hinged together? Please answer as directly as possible.

Ans. I believe the chair seat in each of said exhibits is supported by rigid pieces, and that in all the exhibits these rigid pieces are, at some point, hinged or pivoted to the supporting frame.

Cross-int. 46. I understand your answer to mean nothing more than yes. Am I right?

Ans. Not as I understand the question. I do not understand that the rigid pieces that support the chair seat are hinged together—that is, to each other—but that these rigid pieces forming a chair frame are hinged to the supporting frame.

Cross-int. 47. I will still farther alter the question. Do you agree with me in each of the five exhibits the front of the chair seat is supported by rigid pieces hinged together, and that the rear of the chair seat is supported by rigid pieces hinged together?

Ans. I agree to that, as I now understand the question.

Cross-int. 48. Do you know of any exhibit in this case, except those five and others intended to be samples of the same things or patents describing the same things, which shows this feature, namely, a chair seat supported both front and rear by rigid pieces hinged together? If so, name all the other exhibits which you think show this feature.

Ans. I think this feature is found in Defendants' Exhibit Stevens Patent No. 220,258; also in Defendants' Exhibit Swain Patent No. 217,652. In this answer I have not included exhibits showing the chair seat hinged directly, either at its forward or rear, to its supports.

Cross-int. 49. You have no doubt, have you, that the chairs shown in the Swain and Stevens patents are substantially different from those shown by the five exhibits in question?

Ans. They are different in some respects.

Cross-int. 50. Are they substantially the same or substantially different from the five exhibits, in your opinion? And to make the question more emphatic, I will add, Isn't it perfectly plain that they are radically unlike the five exhibits?

97 Ans. It is difficult to compare several exhibits taken as a whole with reference to their substantial difference or similarity. Each exhibit may have features, elements, or combinations substantially similar, while other elements or combinations may be substantially different, so that if I were to say, comparing one or two chairs with several others as a whole, that they are substantially different I should not regard my answer as excluding substantial similarities between the said exhibits.

Cross-int. 51. I beg to call your attention to the last branch of my question. Please answer it.

Ans. They are unlike in some respects; in others they are not. I do not see how I can give a definite answer to the question, except with the proviso that an affirmative answer does not exclude the possibility of substantial similarities between parts or combinations in the exhibits said to be as a whole substantially unlike.

Cross-int. 52. As this discussion seems to throw some light on what I believe to be your peculiar way of investigating these mat-

ters, I will ask you is it not too plain for rational dispute, in your opinion, that the five exhibits are as a whole substantially alike.

Ans. I should have no objection to saying that the five exhibits mentioned are either as a whole substantially alike or substantially different. I do not understand how to compare several exhibits with various parts and combinations as a whole and say they are substantially alike or substantially different with any definiteness of meaning.

Cross-int. 53. Is it not too plain for rational dispute that each of the five exhibits, taking each as a whole, is substantially the same as any other of the five, again taking the one with which the first is compared as a whole?

Ans. I think not.

Cross-int. 54. You have used the term "chair frame" with two meanings, as I believe, and to avoid that ambiguity, if it be one, I will ask you what thing you mean by that term—that is, not a definition of the phrase, for phrases are wholly immaterial to me, but a description of the thing which you mean by the phrase.

Ans. As I now recall, I have used the term "chair frame" to include the chair seat and the parts rigidly connected thereto, not, of course, having particular reference to the parts above the chair seat.

98 Cross-int. 55. Is it not plain that by the term "chair frame" in the Kenna patent is meant the seat, legs, arms, and back? I don't mean as a matter of law, but as a matter of description merely.

Ans. I think it is so described in the Kenna patent in suit.

Cross-int. 56. Please explain why in comparing the Kenna chair with the Caulier chair you wholly disregard what seems to me to be striking differences, namely, first, that the Caulier chair frame consists of a seat, arms, and back, without legs, rigidly attached to it, unless you reckon the braces which support the foot-rest as legs; and, secondly, the awkward projection of the rigid rear legs of the chair between the arms. I put this question because it seems to me too obvious for rational dispute that the Caulier chair is radically unlike the five exhibits and because, as I understand your testimony-in-chief, you have testified that from certain points of view the Caulier chair is substantially the same as the five exhibits or some of them.

Ans. The Caulier chair was examined by me, as were other exhibits, with reference to the state of the art in the manufacture of such chairs at the date of the Kenna patent in suit, and not for the purpose of pointing out all the differences between it and the exhibits with which it was compared.

I used the term chair frame, I think, in the same sense in which it is used in the interrogatory, and found in the said Caulier chair that this chair frame was hinged to a supporting frame. The differences in the two chair frames compared did not change this fact or feature, and this is one reason why such differences of construction were not pointed out. The projection of the rigid rear legs of the chair between the arms was not noted for a similar reason.

Cross-int. 57. Will you now admit that the Caulier chair is radically unlike or substantially different from the five exhibits, Complainants' Chair, Complainants' Kenna Chair, and Defendants' Chair 1, 2, and 3?

Ans. No; not in all respects.

Cross-int. 58. Is it not too plain for rational dispute that Exhibits Model of Caulier Chair, Chichester Chair No. 1, and Chichester Chair No. 2 lack the front legs of the five exhibits rigidly secured to the seat frame and hinged to the front posts of the supporting frame?

Ans. I think that is plain, as I understand the question.

99 Cross-int. 59. It is not equally plain that the supporting frame of Exhibits Model of Caulier Chair, Chichester Chair No. 1, and Chichester Chair No. 2 differ from the supporting frame of the five exhibits in that the front posts of the Caulier and two Chichester exhibits are long enough to support the front of the seat as a high chair directly, while in the five exhibits the front posts of the supporting frame are not long enough for that, but require the front legs rigidly attached to the seat frame to make them long enough for that?

Ans. I should say that the supporting frames in all the exhibits named in the question are substantially alike, and that the length of the front posts or supports in these several frames are adapted to the respective chair frames hinged upon them. It is true, however, that in the said Caulier model and Chichester chairs No. 1 and No. 2 these front posts reach up to the chair seat, while in the five exhibits referred to they do not.

Cross-int. 60. Have you overlooked the fact that in Exhibits Model of Caulier Chair, Chichester Chair No. 1, and Chichester Chair No. 2, when used as low chairs, the weight of the chair and occupant tends to force the front wheels away from the rear wheels and thereby break the hinge or joint which connects the front posts of the supporting frame to the chair seat, while nothing of the sort occurs in either of the five exhibits—Complainants' Chair, Complainants' Kenna Chair, and Defendants' Chairs 1, 2, and 3?

Ans. Since the weight of the chair acts vertically downward and the resistance offered by the surface upon which the wheels rest is normal to that surface, I do not see anything, the parts being rigid, to force the front and rear wheels farther apart any more in the Exhibits Caulier Chair and Chichester Chair No. 1 and No. 2 than in the other exhibits mentioned, the parts being equally rigid.

GEO. I. ALDEN.

Attest: WM. A. COPELAND,
Special Examiner.

100 *Evidence for Complainants in Reply.*

Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before me, William A. Copeland, special examiner.

BOSTON, *Oct. 8th*, 1886.

Present: J. E. Maynadier, Esq., of counsel for complainants; Thomas H. Dodge, Esq., of counsel for defendants.

Deposition of Joseph P. Livermore.

Direct examination by J. E. MAYNADIER, Esq., of counsel for complainants:

Int. 1. What is your name, age, residence, and occupation?

Ans. Joseph P. Livermore; 31; Cambridge, Mass.; solicitor of patents and mechanical expert.

Int. 2. What experience have you had as to inventions and patents and as a witness in controversies relating to patents?

Ans. During the last seven years I have been occupied as solicitor of patents and have constantly been called upon to examine inventions and prepare specifications for patents for inventions relating to various kinds of machines, apparatus, and articles, and have had to compare inventions and descriptions and drawings of patented machinery and articles as to their resemblances and differences. During the last two or three years I have several times testified as expert in patent cases relating to inventions of various kinds.

Int. 3. Are you familiar with the Kenna patent in suit and with the state of the art relating thereto? If so, please explain what you believe to be the main features of the invention described in the Kenna patent in suit.

Ans. I am familiar with the Kenna patent and have examined the state of the art relating to it, more especially as represented in the various exhibits in this case. The Kenna chair is com-

101 posed of a lower supporting frame, a chair frame, a supplemental frame or bail and fastening for the bail, so that the lower frame and bail together support the chair frame as a high chair. The supporting frame of the Kenna chair differs substantially from all others, so far as I know, because it is shortened to the height required to be added to the low chair to make a high chair, and it turns quarter around when the chair is to be used as a low chair. A supporting frame the same as Kenna's as to height is old, as illustrated in patents to C. H. Barnes, No. 213,610, and A. B. Stevens, No. 220,258; but these frames do not turn quarter around; and a supporting frame the full height of a high chair that turns quarter around is old, as illustrated in the patents to Harris & Childs, No. 137,610, and French & Hunting, No. 188,120; but a supporting frame having both these features—that is, being shortened and turning quarter around—is, so far as I know, new with Kenna, and the combination of such a supporting frame with the chair frame, bail, and fastening is, in my opinion, the striking nov-

elty of the Kenna invention. The combination of these four elements, each of which is old, makes a radically new chair, for the reason that the supporting frame is in a materially different relation to the other parts, both when the chair is in the high and in the low position, and the mode of operation of the parts is substantially unlike that of any other chair known to me.

In the Harris & Childs patent, for example, the supporting frame *a b b c*, taken by itself as a frame, is the same as the Kenna supporting frame A; but it is the full height of a high chair, and when turned quarter around the chair frame has to be turned upside down to make a low chair. In the Harris & Childs high chair the front legs are rigid pieces extending from the floor to the seat and the rear legs are in two parts hinged together; but in the Kenna chair the front legs are in different parts hinged together and the rear legs or support are in different parts hinged together, and the lower rigid part of the front legs is rigidly connected with the lower rigid part of the hind legs, while in the Harris & Childs chair the whole rigid front legs are rigidly connected with the lower rigid part of the rear legs.

In the French & Hunting patent the supporting frame A A′ E E by itself is the same as the Kenna supporting frame A; but it is the full height of the high chair, and when turned quarter around the chair seat has to be wholly disconnected from the front legs.

102 In the French & Hunting chair the front legs are one rigid part extending from the floor to the chair seat, and the rear legs are in two parts hinged together, and the entire rigid front legs are rigidly connected with the lower rigid portion of the hind legs; but in the Kenna chair the front legs, as before stated, are in different parts hinged together, and the hind legs are in different parts hinged together, while the lower rigid portion only of the front legs is rigidly connected with the lower rigid portion of the hind legs.

In the Barnes chair the supporting frame I J by itself is substantially the same as the Kenna supporting frame A, and, like the Kenna frame, is only the height required to be added to a low chair to make a high chair, but it does not turn quarter around to make a low chair, and is, in fact, only a stool on which a low chair is set to make a high chair, and when used as a low chair this stool has to be wholly removed from the chair frame and set aside.

In the Barnes high chair the front legs or support and the rear legs or support are substantially rigid pieces from floor to seat, thus differing substantially from the Kenna front and rear supports, which, as before stated, are each made in different parts hinged together with the lower rigid parts of both rigidly connected together.

In the Stevens chair the supporting frame *a b c d* by itself is substantially like the Kenna supporting frame A, and is also shortened to the height required to be added to a low chair to make the high chair, but it does not turn quarter around to convert the chair into a low chair. In the Stevens chair the front legs or supports are made in two rigid parts linked together, making in reality three rigid parts, with two hinge joints, and the rear supports are made in two

parts, connected by a short link that is substantially the same as a hinge—that is, the Stevens front supports differ from the Kenna's in being composed of three rigid parts instead of two, while the Stevens rear supports are substantially the same as Kenna's, but the Stevens supporting frame is substantially unlike Kenna's in the combination because it does not turn quarter around, and cannot when the chair is in use, either as a high or as a low chair.

These illustrations and comparisons are intended to make my meaning more clear when I say that in my opinion the main feature of the Kenna invention is the shortened supporting frame turning quarter around, and the other features are hinging
103 this frame to the lower part of the front legs of the chair frame and supporting the rear part of the chair by a supplemental frame or bail hinged to the rear part of the supporting frame and fastening the bail in position to support the chair on it.

Int. 4. Please look at the Exhibits Model of Kenna Patented Chair and Kenna Patented Chair and state what material alterations, if any, you find in them from the chair described in the Kenna patent. I refer especially to the relation of the bail E to the cross-rod *f* and the spring catch F, and do not mean to ask you as to mere changes in pattern or style. State also what object or purpose is fairly attributable to the maker of such changes as you may point out.

Ans. In Fig. 2 of the Kenna drawing the upper part of the bail E comes under the ends of the side bars of the base frame of the chair, and these ends project to the rearward of the bail E, and from the whole drawing and description I understand that the bail E comes directly underneath the rod *f*. I am convinced of this, although the end of the rod *f* does not show in Fig. 2, because this rod is clearly shown in Fig. 1 as being behind the wheels L, which would bring it over the end of the bail E, and I understand that F represents a spring catch or fastening that holds the bail under the rod *f* so as to support the rear part of the chair. In both exhibits referred to the bail, when looked at from the side, as in Fig. 2 of the patent drawing, and when sprung into engagement with the spring catch on the rod, does not come under the ends of the side bars of the chair frame, which, instead of projecting to the rearward beyond the bail, are not so far to the rear as the bail, and the bail, instead of coming under the cross-rod marked *f* in the patent, stands wholly at the rear of the cross-rod and under the spring catch, which stands out like a long finger from the cross-rod.

In Exhibit Kenna Patented Chair the bail can be forced forward into the position shown in the patent under the cross-rod, but this strains the parts, and it evidently was not intended that it should be so forced forward.

The spring catch in both exhibits, when looked at from a side elevation, extends far to the rear of the side bars of the chair frame, but it does not so appear in Fig. 2 of the patent drawing, and it would not have to extend to the rear of the side bars to properly engage the bail as represented in the patent.

104 By having the bail engage a finger projecting out from the cross-rod, as represented in both exhibits, the weight of the chair tends to rotate the cross-rod, and the Exhibit Model of Kenna Patented Chair has additional pieces of wire soldered to the cross-rod where it enters the wood, which prevents such rotation of the cross-rod; and in the Exhibit Kenna Patented Chair the cross-rod is restrained from rotation and there are pins that appear in the wood which, from their position, I believe engage the cross-rod to prevent its rotation. Nothing is said in the patent of any tendency to rotate the cross-rod or of any means to prevent such rotation, and the change of position of the bail with relation to the other parts in the exhibits referred to from that represented in the patent appears to me to be attributable to an intention on the part of the maker to represent some different mode of operation or function of the parts from anything represented in or suggested by the patent.

Int. 5. Two of the witnesses for the defendants have testified in substance that in their opinion the catch F and the rod *f* of the Kenna patent have some other function than a rest or support or fastening for the bail E when the chair is used as a high chair, and that these parts F and *f* serve as a spring or yielding support for the rear of the chair. What, if anything, can you find in the drawings or specification of the Kenna patent which seems to you to show any such function of the parts F and *f*? And explain the function of these parts as you understand it.

Ans. I find nothing that seems to me to show any such function of the parts F and *f*, and no such function is ever suggested to me by a careful examination of the patent. I understand that the function of the spring catch F is to receive the upper end of the bail and retain it in position to support the chair, and that the rod *f* is merely the part of the frame-work supported directly on the bail by which the support of the bail is transmitted to the remainder of the chair frame and the chair seat. I understand that the part F is spoken of in claim 2 as a yielding rest or support merely because it yields to permit the bail to pass into position beneath it and the rod *f*.

Int. 6. Please go over the exhibits in the case and state which of them do and which of them do not embody the invention of Kenna, giving briefly your reasons.

105 Ans. I go over the exhibits in the order in which they were introduced in evidence.

The first is Exhibit Kenna Patent in suit, which, of course, embodies the Kenna invention.

The second is Exhibit Chichester Patent 259,368, which embodies the Kenna invention, because it contains the combination of the supporting frame, the chair frame, the bail and its fastening, and the supporting frame G H *a a* is the same as the Kenna supporting frame, being shortened to substantially the height required to be added to a low chair to make a high chair and turning quarter around when the chair is converted into a low chair. The chair in this exhibit is substantially the same as the Kenna chair, because the front legs of the high chair are made in two parts hinged to-

gether, and the rear legs or support is made in two parts hinged together, and the lower rigid portion of the front legs is rigidly connected with the lower rigid portion of the hind legs, all of which are the main characteristics of the Kenna invention, and the mode of operation of the parts of the chair shown in this exhibit is the same as that of the parts of the Kenna chair.

The next, Exhibit Chichester Patent 260,843, also represents a chair embodying the Kenna invention, because it contains the combination of the supporting frame, chair frame, bail and fastening, and the supporting frame is substantially the same as the Kenna supporting frame, being shortened and turning quarter around; and the front legs of the chair shown in this exhibit are composed of two rigid parts hinged together, and the rear legs are also composed of rigid parts hinged together, and the lower rigid portion of the front legs is rigidly connected with the lower rigid portion of the rear legs, as in the Kenna invention.

The next exhibit is the Parker patent, No. 317,668. This exhibit shows a chair that embodies the Kenna invention, because it contains the shortened supporting frame turning quarter around, the chair frame, the bail, and the fastening, and these parts are in the same relation to one another and have the same mode of operation as in the Kenna invention. In this exhibit the supporting frame is hinged to the front lower corner of the chair frame, and
106 the front and rear supports or legs of the chair are each made in separate parts hinged together, and the lower rigid part of the front legs is rigidly connected with the lower rigid part of the hind legs, all as in the Kenna chair.

The next exhibit is Complainants' Chair. This embodies the Kenna invention, because it contains the shortened supporting frame turning quarter around, the chair frame, bail and fastening, and these parts have the same relation to one another and the same mode of operation as in the Kenna chair.

The next exhibit is Defendants' Chair 1. This exhibit embodies the Kenna invention, because it contains the shortened supporting frame turning quarter around, the chair frame, bail and fastening, these parts all having the same relation to one another and the same mode of operation as in the Kenna chair.

The next exhibit is Defendants' Chair 2. This exhibit embodies the Kenna invention, for it contains the shortened supporting frame turning quarter around, the chair frame, bail and fastening, all in substantially the same relation and having the same mode of operation as in the Kenna chair.

The next exhibit is Complainants' Exhibit Model 1. This exhibit embodies the Kenna invention, for it contains the shortened supporting frame turning quarter around, the chair frame, bail and fastening, all constructed and operating substantially as in the Kenna chair.

The next exhibit is Complainants' Exhibit Model 2. This exhibit also embodies the Kenna invention, for it contains the shortened supporting frame, the chair frame, bail and fastening, co-operating together the same as in the Kenna chair.

The next exhibit is Complainants' Exhibit Model 3. This exhibit also embodies the Kenna invention, for it contains the shortened supporting frame, the chair frame, bail and fastening, all constructed and operating substantially as in the Kenna chair.

The next exhibit is Defendants' Chair 3. This exhibit also embodies the Kenna invention, for it contains the shortened supporting frame, the chair frame, bail, and fastening, constructed and operated in substantially the same manner as in the Kenna chair. I take into consideration the fact that the bail is hinged at its upper end to the chair frame instead of at its lower end to the support-
107 ing frame, as in the Kenna, and that it is connected at its lower end with the supporting frame by short links that snap past the center to fasten the bail in place as a prop for the chair frame. These differences are, in my opinion, wholly immaterial, as they do not change the relation of the parts or their mode of operation, and the short links are a well-known form of fastening device, illustrated, for example, in carriage tops.

The next exhibit is Complainants' Exhibit Complainants' Kenna Chair. This exhibit also embodies the Kenna invention, for it contains the said four parts—chair frame, supporting frame, bail, and fastening—having substantially the same relations and mode of operation as in the Kenna chair.

The next exhibit is Heywood Bros. & Co. Catalogue, Oct. 1, 1878. In this I refer only to the chairs shown on page 8. None of the chairs illustrated on this page embody the Kenna invention, for there is no chair represented containing the shortened supporting frame, turning quarter around, and a chair frame, bail, and fastening arranged and operating as in the Kenna chair. The chair called the Pearl, folding table and carriage, No. 292, has a supporting frame, a chair seat, bail, and fastening, but the supporting frame is not the Kenna supporting frame, for it is not shortened, but it is the full height of the high chair, and it has not the same mode of operation, for it does not turn quarter around, but turns into an inclined position extending diagonally from the front of the chair seat to the floor at a point far in the rear of the chair seat, where it acts as a support for the low chair. The front legs of the Pearl chair are not made in two rigid parts hinged together like Kenna's, but are a single rigid part extending from the floor to the chair seat to which they are hinged. The hind legs or support of the Pearl chair consists of two parts hinged together substantially like Kenna's, but the chair as a whole is radically different from Kenna's. The chairs represented as Nos. 295 and 189 do not have a rigid supporting frame and are wholly unlike Kenna's in construction and mode of operation. The chairs represented as Nos. 294, 188 F, 125 F, and 55 F and 57 F have a shortened supporting frame, which is, however, radically different from Kenna's in mode of operation, and is, in fact, only a stool on which the low chair sits to make a high chair
108 and which is removed from beneath the high chair and turned upside down to make a table when it stands in front of the low chair and the low chair sits on the floor.

The next exhibit is Chichester Patent 217,341. This exhibit does

not embody the Kenna invention. The supporting frame is totally unlike Kenna's both in construction and mode of operation, and there is no bail and fastening. The low chair is supported on a crossed frame, the front and rear portions of which are not rigidly connected together as in the Kenna supporting frame, and the crossed frame does not turn bodily a quarter around, but its crossed parts fold on one another, making a radically different construction and mode of operation from Kenna's.

The next exhibit is Exhibit Caulier Patent. This does not embody the Kenna invention, for it has not the shortened supporting frame, and the supporting frame which is the full height of the high chair does not turn quarter around to make the low chair, and furthermore it does not contain the bail and fastening. In the Caulier high chair both front and rear legs are single rigid parts from floor to chair seat.

The next is the Harris & Childs Patent. This does not embody the Kenna invention. The difference between its supporting frame and Kenna's has been previously pointed out by me, and it also does not have the bail and fastening. It is radically unlike Kenna's in construction and arrangement and way of operating.

The next exhibit is the Patten Patent. This does not embody the Kenna invention, for it does not have the shortened supporting frame, bail, and fastening. The front legs are made in two parts hinged together like the front legs of the Kenna chair, but the rear legs are a single rigid part extending from floor to chair seat and no portion of the rear legs is rigidly connected with the front legs. The lower part of front legs is connected by a link with the rear legs, and the front and rear legs have an independent motion around different centers in lowering the chair, the former turning about quarter around, while the latter turns nearly 180°.

The next exhibit is the Barnes Patent. This, as I before stated, consists merely of a low chair and a separate stool on which to set it to make a high chair, and is radically different from the Kenna chair. It has a bail and fastening, but these are merely to hold the low chair down on the stool or to push the chair, when down,
109 off the stool, and are not Kenna's bail and fastening, for they do not support the hind part of the chair.

The next exhibit is the French & Hunting Patent. This does not embody the Kenna invention, for it hasn't the shortened supporting frame, and the mode of operation of the high supporting frame extending from the floor to the chair seat, in its relation to the chair seat, is wholly unlike Kenna's. The front legs are rigid from floor to chair seat, and there is no hinge connection between the front legs and chair seat, which latter has to be wholly disconnected from the front legs when used as a low chair.

The next exhibit is the Swain Patent. This does not embody the Kenna invention, for it has no shortened supporting frame turning quarter around, and it has no bail and fastening. The Swain chair is merely a chair seat supported on a pair of crossed legs and raised and lowered by varying the angle between the legs.

The next exhibit is the Gleason Patent. This does not embody

the Kenna invention, for it hasn't the shortened supporting frame nor the bail and fastening. The mode of operation of the supporting frame, which is the full height of the high chair, is radically different from that of the Kenna patent, for it has to be wholly disconnected from the chair seat in order to lower the chair.

Neither the front nor the rear legs are made in separate parts hinged together, but the front legs are single rigid portions extending from the floor to the chair seat, and the rear legs or support are in two separate portions, one resting on the other, but not hinged together.

The next is the Worch Patent. This does not embody the Kenna invention, for it does not have the supporting frame turning quarter around nor the bail and fastening. It has two side frames of full height from the floor to the high chair seat, which separately fold up by turning quarter way around into a recess under the chair seat.

The next exhibit is the Stevens Patent. This does not embody the Kenna invention, for it does not have the shortened frame that turns a quarter way around to lower the chair. It has a shortened supporting frame which does, however, always remain in an upright position, and the mode of operation of the parts is radically different from the parts of the Kenna chair. The front support or legs of the Stevens high chair is made in three parts connected
110 together by two hinges, so that the chair frame is lowered with relation to the main frame without turning one quarter way around with relation to the other, as has to be done in the Kenna construction. The rear legs or supports of the Stevens chair are in separate parts, hinged together, and substantially like the bail and fastening of the Kenna chair, but the relation of elements to one another and their mode of operation are radically different in the Kenna and Stevens chairs.

The next exhibit to be considered is Chichester Chair No. 1. This does not embody the Kenna invention, for it does not have the shortened supporting frame, and the high supporting frame does not turn a quarter way around. This is the same as the Pearl chair, cut No. 292 of Heywood Bros. & Co. catalogue.

The next is Chichester Chair No. 2. This is the same in substance as the last one, and, like it, does not, in my opinion, embody the Kenna invention for the reasons already given.

The next is Exhibit Model of Caulier Chair. This is substantially the same as represented in the Caulier patent, and does not, in my opinion, embody the Kenna invention for the reasons above given.

The next is Defendants' Exhibit Kenna Patented Chair. This does embody the Kenna invention, for it has all the parts constructed and operating in substantially the same way as in the Kenna patent. I have already spoken of the difference between the relative position of the supporting bail and the part that rests on it and corresponding parts in the Kenna patent; but this difference is, in my opinion, wholly immaterial.

The next exhibit is Model of Kenna Patented Chair. This is

substantially like the last exhibit, and does, in my opinion, embody the Kenna invention.

The next exhibit is the Parker Chair. This is substantially the same as Complainants' Exhibit Defendants' Chair 3, and does, in my opinion, embody the Kenna invention for the reasons before given.

The next exhibit is Defendants' Exhibit Illustrative Chair. This exhibit is a chair made to operate in two different ways. It has a shortened supporting frame, chair frame, bail, and fastening device which can be made to operate in the same manner as the Kenna chair, and when so arranged the exhibit does, in my opinion, embody the Kenna invention. The front legs in this exhibit are made in two rigid parts hinged together and also hinged to the
111 chair frame, and hooks are arranged to make either set of hinges inoperative. When the upper hinges are thus held inoperative and the lower hinges permitted to operate it is the Kenna chair in substance, but when the lower hinges are retained inoperative and the upper hinges are made to operate the chair does not embody the Kenna invention, for with the lower hinges inoperative the chair does not have the shortened lower frame and the frame does not turn a quarter way around to make a low chair, but turns less than a quarter way around and sticks out behind the low chair.

Int. 7. Which, if any, of the exhibits, except those which you have said embodied the Kenna invention, show a shortened supporting frame which turns a quarter way around when the chair is altered from high to low or *vice versa?*

Ans. None of them.

Int. 8. Which, if any, of the exhibits, except those which you have said embodied the Kenna invention, show a supporting frame hinged to the front legs of the chair and turned toward the back of the chair when altered from high to low and toward the front of the chair when altered from low to high?

Ans. None of them show a rigid supporting frame hinged to the front legs of the chair and turning this way.

Int. 9. Which, if any, of the exhibits, except those which you have said embodied the Kenna invention, show a chair with both front and rear legs made of rigid pieces hinged together, not including Exhibit Stevens Patent No. 220,258, in which the upper and lower parts of the front legs are connected by a link?

Ans. None of them show a chair with the front legs made of rigid parts hinged together and the rear legs made of rigid parts hinged together.

(Adjourned.)

BOSTON, *Oct.* 11, 1886.

Int. 10. Which, if any, of the exhibits, except those which you have said embody the Kenna invention, show a chair seat supported by front legs composed of two rigid frames hinged together and by rear legs made up of a rigid frame extending between the frame

(which forms the lower part of the front legs of the chair)
112 and the chair, which frame, making a part of the hind legs, is held in place in the high chair by a hinge at one end and a fastening device at the other?

Ans. None of them.

Int. 11. Much has been said by one of the witnesses for defendants as to whether it was invention or only a matter of taste and skill to produce the Kenna chair, and the Exhibit Illustrative Chair was probably put in evidence as throwing some light on this question. Please compare the Pearl chair, Exhibit Chichester Chair No. 2, with the Exhibit Illustrative Chair, and compare also both these exhibits with the Kenna chair and state whether, in your opinion, it required invention or not to produce the Kenna chair as you have described it, assuming, for the purposes of this question, that the Exhibit Chichester Chair No. 2 was known to Kenna, and also that the chairs shown in the Patten patent and the Harris & Childs patent were also known to Kenna prior to any invention by him. Please state also your reasons for any opinion you may express.

(Notice is hereby given to defendants' counsel that the assumption spoken of is made solely for the purposes of this question, and in particular that it is not admitted that either the Pearl chair, Exhibit Chichester Chairs Nos. 1 and 2, or the chairs shown in the Patten patent was made prior to the date of the invention described in the patent in suit.)

Ans. The Exhibit Illustrative Chair, being made with hinges where the front legs join the chair seat, and also with hinges at the lower ends of the front legs, may have been intended to show that it was merely a matter of taste and skill to choose where the hinges should be placed, and that all that was required to make the Kenna invention from the Pearl chair was to place the hinge lower down. If such was the intention the illustrative chair; in my judgment, fails to show that such was the only change required, and it is true that merely the change in location of the hinge in the Pearl chair would not produce the Kenna chair. The Exhibit Illustrative Chair, when the lower hinges are made inoperative and the upper hinges permitted to work, differs substantially from the Pearl chair, as is clearly shown when both are placed in the low-chair position, in which the supporting frame of the Pearl chair extends diagonally from the chair seat to the floor and in connection with a brace between the
113 frame and the rear part of the chair seat forms the rear legs or support of the low chair, and this frame in the Pearl chair, therefore, does not turn quarter around to make the low chair and does not contain that one of the main features of the Kenna chair. In the illustrative chair, when used as a low chair, with the front legs of the supporting frame rigid to their point of junction with the chair seat, the low chair has rear legs or supports directly to the floor and it does not have its rear support at the lower corner of the supporting frame, which is turned far enough back to clear the floor and is, therefore, in this feature of its operation, like the Kenna chair and substantially different from the Pearl chair. The illus-

trative chair when used in this way, with the front legs of the supporting frame rigid up to the chair seat, in my opinion, approaches the Kenna invention—that is, contains a portion of the advantages in the Kenna invention that do not exist in the Pearl chair, but still falls far short of the complete Kenna invention.

I am of the opinion that it required invention and not merely mechanical skill to produce the Kenna chair, even if the Pearl chair were known to the inventor, because there is a substantial change in the mode of operation of the parts, and a comparison of the Pearl chair arranged as a low chair with the Kenna chair seems to me to show conclusively that if only mechanical skill were required the change would have been immediately made when the Pearl chair was produced instead of adhering to the Pearl construction, which is awkward and unmechanical as a support for the low chair and is awkward and unsightly for the reason that the greater part of the supporting frame stands out at the rear of the chair, which thus occupies nearly twice the space of a single low chair, while by Kenna's combination and mode of operation the converted low chair occupies but little more space than a simple low chair not convertible into a high chair. I do not think that a knowledge of the Patten chair would suggest any or all of the changes required to make the Pearl chair into the Kenna chair, for, although the Patten chair shows the front legs made in two parts hinged together and an independent rear support for the low chair, it does not in any way suggest that a rigid supporting frame shortened and hinged to the front legs of the chair could be got out of the way by turning it quarter around so as to make a compact and durable low chair of good appearance.

114 Int. 12. You have spoken of two main objections to the Pearl chair—one, the awkward and unmechanical support of the chair as a low chair, and the other the undue space occupied by and the awkward appearance of the low chair when used as a low chair, and you have said that the Kenna invention obviates the latter, but failed to say whether it obviated the former or not. Please state how the fact is as to that.

Ans. It does and I intended to say so.

(The examination of Mr. Livermore is suspended for the purpose of taking the depositions of Joseph W. Kenna, Herman Vanderploeg, and Edward J. Reed.)

(The deposition of Mr. Livermore is continued on page 135.)

Deposition of Joseph W. Kenna.

Direct examination by J. E. MAYNADIER, Esq., of counsel for complainants:

BOSTON, *Oct.* 11, 1886.

Int. 1. What is your name, age, residence, and occupation?

Ans. Joseph W. Kenna; 36; La Grange, Illinois; manufacturer of chair and furniture specialties.

Int. 2. Who is the inventor of the chair described in letters pat-

ent No. 224,923, dated Feb. 24, 1880, a copy of which I now show you?

Ans. I am.

Int. 3. When were chairs substantially like the chair shown in that patent first put upon the market?

Ans. I believe the first chair that we sold was in 1878.

Int. 4. Your patent was applied for July 28, 1879. About how long before the date of your application were your chairs in the market?

Ans. I think it was about thirteen or fourteen months—excuse me a moment—well, I couldn't tell whether it was the spring or the fall previous to my making the application that I offered the chairs for sale by model, but it was either—well, somewhere about a year before making the application. I couldn't tell within a month or so.

115 Int. 5. Please look at this chair, Exhibit Complainants' Chair, and state who made it, and also how it differs from the chairs you made and put on the market in 1878.

Ans. The model that the order was taken from was the same make as the drawings shown in my patent, and I made this chair, Exhibit Complainants' Chair, after this principle shortly after getting these orders that I referred to. This chair, Exhibit Complainants' Chair, was made under my direction by Ford, Johnson & Co. It was made in the penitentiary by one of the convicts. I gave instructions how to have the chair made. I sent a full-sized chair to the factory. I think it was 300 dozen in the order. I sent some samples at first to see if the chair was all right, and when they got it in proper shape to see that it was properly made I told them to go ahead with the order.

Int. 6. Can you tell whether this particular chair, Exhibit Complainants' Chair, was sold before the date of your patent or not? If so, how?

Ans. I think while the patent was pending that we—before the patent was granted, anyhow—that we sold some chairs. That particular chair, it is pretty hard to tell. I think this is a part of a lot of 50 dozen that were sold to Ambrose E. Barnes & Co., of New York city. I think that is one of the chairs that we made and sold. My reason for thinking so is this old attachment here. I think we haven't made any of that kind for seven or eight years—this old latch here (referring to the latch on the table).

Int. 7. Do you find your patent stamp on that chair; and, if not, why was it omitted?

Ans. Well, we always put our patent stamp on the chair, either here or here (indicating underneath the chair seat)—that is, after the patent was granted.

Int. 8. Was there any patent mark on those chairs sold before the patent was granted; if so, what?

Ans. There was no patent mark on them until after the patent was granted.

Int. 9. When did you make the model which was filed in the Patent Office with you- application for the patent?

Ans. I made that particular model in the early part of the year 1877. I made a rough working model, which I brought to
116 the model-maker's in that year—in the winter of 1876 or early part of 1877—about New Year's.

Int. 10. Please look at the model now shown you, Exhibit Model of Kenna Patented Chair, and state anything wrong about it, if you see anything.

Ans. Well, the frame, the upper and lower part of the chair—that is, the frame—the upper part of the chair as far as the tying bar of the wheels is about right; but the connection here at the bail, the way the bail is fastened to the underneath part of the chair body, ain't the same as mine—but in other respects it looks very much like mine. This is the part I refer to here (indicating the upper part of the bail and fastening.)

Int. 11. Please look at the model now shown you and state what you know about it.

(The model is now put in evidence and marked Complainants' Exhibit Kenna Model 2, W. A. C., sp'l ex'r.)

Ans. I made a model exactly like this, with the exception I had a little catch here, at this toggle business, to fasten or lock the chair in different positions, in the early part of 1877.

Int. 12. Do you know Mr. Philander Derby, one of the defendants in this case? If so, how long have you known him?

Ans. Do you mean the old gentleman?

Int. 13. Yes.

Ans. I know him since 1876 or 1877, or along there some time; I think it was the winter of 1877 that I first met Mr. Derby in Chicago. I have met him there several times since, or a few times. I don't know how many really, but I know it was more than twice.

Int. 14. Do you know whether he ever saw your model like this one, Exhibit Kenna Model 2? If so, how do you know it? And state the circumstances.

Ans. I know that Mr. Derby was a partner in the house that I was connected with at that time. He used to call on me in the finishing department. I have showed him all my inventions in chairs from time to time. I had several chair models there which he examined, looked over, and he used to see my inventions from time to time, come up there and sit and talk and so on. That is all, I guess.

Int. 15. What was the name of the house you just referred to?

Ans. J. S. Ford, Johnson & Co., chair manufacturers.

117 Int. 16. When did you first see a chair like this one—Exhibit Parker Chair?

Ans. I made a chair like that myself once, with the exception of the pivoting here was like this (referring to Exhibit Complainants' Chair). I pivoted the handle just like this—the arm here (Exhibit Parker Chair). I had it so as it hung down here (in front).

(Question re-read.) I wanted to explain the slight changes in this from the one I had, but this is really the same chair. Well, all I wanted to say is that that chair is my invention. I don't know whose patent it is, but I invented that chair about eight years ago.

Cross-examination by THOMAS H. DODGE, Esq., of counsel for defendants:

Cross-int. 17. Look at Complainants' Exhibit Kenna Patent in suit and state how many full-sized chairs to your knowledge were ever made like the chair shown and described in that patent.

Ans. We made my first full-sized chairs just like that. I had three experimental chairs, full size; one was walnut, the other was part walnut and part white wood—light stock—and the other one was a kind of a rough chair—the first one I got up; and—well, with those bars G I don't know how many there were made. My partner, Mr. Hitchcock, he suggested we take off these sliding bars so as to cheapen the chair. I then showed him a model something similar to this (Exhibit Complainants' Chair) and he thought that this was cheaper. We made some chairs like that (patent drawing), but I don't know how many, on Mr. Hitchcock's account. It was kind of hard work to get him to take hold, and of course I had to go according to what he said in the matter. That's all, I guess.

Cross-int. 18. You never made and sold any chairs with the slotted bars G on, did you, either before or after your connection with Mr. Hitchcock?

Ans. I stated before I made the chairs with the bars G on. There were a number of them made at first, as I attempted to explain, and they went with the other chairs in the regular course of business. I don't know who got them.

Cross-int. 19. Did you ever make any before your connection with Mr. Hitchcock?

118 Ans. I made a drawing of that—about that style of chair (patent drawing)—about six months before I was connected with Ford, Johnson & Co.

(Question re-read.) Well, we were connected in a great many ways. I went there as a foreman and I was afterwards partner for three and a half years. Now, which one do you mean?

Cross-int. 20. When did you first commence to work for Reuben A. Hitchcock or any firm with which he was connected?

Ans. It was in the fall of 1876.

Cross-int. 21. Now, state when you first made a full-size chair having the slotted bar G shown in your patent, and then state, to save additional questions, how many such chairs you ever made or you ever know to be made and where they were made, when, and what become of them.

Ans. I made a full-size chair like that shown in the drawings here in 1877—the early part of 1877. I experimented in the winter of 1876 and along there and had it complete about April, I think, 1877. I had it in a rough state, so that I knew what the invention was, before that. As to the selling those chairs that were afterwards made, I couldn't tell to whom they were sold nor anything about it, as they were sold through Ford, Johnson & Co. mostly. I have had chairs made by Kappes & Aggers. They then had a factory on Canal St., Chicago. Aggers is now in the furniture business, about half a block from where he used to have the factory—in the retail

line. The other man is somewhere in the town—south side of the town. We had some chairs made in South Bend, Indiana; but as to this, they were of walnut—some plain, cheap chair like this (Exhibit Compl'nts' Chair).

(To the second clause:) I couldn't tell how many of those chairs were ever made—that is, with the slotted bars. Mr. Hitchcock said it would cheapen the chair, and, so as to please him, we made them. We got a number full-size slotted bars, as we call them. I have got a number of them made at that time that we haven't used.

Cross-int. 22. Can you testify of your own knowledge that there were ever more than three full-size experimental chairs made like the one shown in the patent having the slotted bars G on?

Ans. There was quite a number of those made in Michigan City, by J. S. Ford, Johnson & Co., at first. They used to send the chairs up and down from the factory to the store for my inspection. They didn't have any way of making the slotted bars in Michigan
119 City, and we had some made in Chicago; and when the chairs were going out on orders they used to be fitted and put up in the usual way, same as any other stock. The sample chair that I sent to Michigan City had those slotted bars referred to.

Cross-int. 23. Was that sample chair that you sent to Michigan City the first full-size slotted bar chair that you ever made?

Ans. I have sent so many to Michigan City that I can't remember exactly. I have sent a good many chairs there from time to time.

Cross-int. 24. When did you send the first one to Michigan City?

Ans. Well, that I couldn't remember. I don't think that I sent any there until after my arrangement with Mr. Hitchcock.

Cross-int. 25. When did you make the arrangement with Mr. Hitchcock?

Ans. It was previous to filing the application for this patent; some months.

Cross-int. 26. You had not made a full-size chair with slotted bars previous to that time, had you?

Ans. I did make it long before that.

Cross-int. 27. How do you know, if you can't remember when you sent the first one to Michigan City?

Ans. I know by the year I went to work there. It was the Centennial year. I think it was the year that Mr. Tilden was candidate for President of the United States—that fall—and it was the winter of that year or the next spring that I had the full-size chair complete. It was that time that I made the chair and put on the slotted bars—that spring.

Cross-int. 28. Mr. Hitchcock knew all about what you were doing, did he not?

Ans. No, sir; nor any other man. I mean any other member of the firm.

Cross-int. 29. When did you first let any member of the firm know anything about it?

Ans. Mr. Hitchcock accidentally see the chair one day and he

took Mr. Ford upstairs—he was the senior member of the firm—and he asked for permission for Mr. Ford to see the chair and I objected to them seeing it. I wanted to take some action to cover it by patent or make application. They then gave me guarantee that they wouldn't take any advantage of me or my invention.
120 Then I showed them the full-size chair with those slotted bars. This must have been a year and a half or somewhere along there previous to the date of my application for a patent. That is the first time I knew of their knowing anything of it.

Cross-int. 30. What did you do about this matter or invention between the time of your showing this chair to Hitchcock and Ford and your making the application for a patent?

Ans. I don't remember just what I did. I was working all the time on chairs. I got up some other inventions on chairs. I asked Mr. Hitchcock some time afterwards if he would like to take an interest in the chair. He said he thought he would, and he kept putting it back from time to time. Business got to rushing just about that time, and when he got around to it, as he said himself, we made this arrangement.

Cross-int. 31. Did you get those other inventions that you refer to patented?

Ans. Yes, sir; some of them.

Cross-int. 32. Were these inventions patented after or before this patent?

Ans. After this application was filed. I don't know the dates of them. Yes; after this was patented, I believe.

Cross-int. 33. Did you make applications for them before the date of the application for the patent you have before you?

Ans. I think it was after this. It was after this I know the models were made, some of them, and were in the patent solicitor's office for a year or for quite a number of months.

(Noon recess.)

Cross-int. 34. You stated in your answer to 19th cross-int. that you made a drawing of the style of chair (like the patent drawing) about six months before you were connected with Ford, Johnson & Co. What connection did you refer to and when did it take place?

Ans. I made drawings in Philadelphia, Penn., of what I thought would be an improvement on a crossed-legged carriage chair during the time of the Centennial, and on the Centennial grounds I made a slight sketch for it.

(Question repeated.)

I made the drawing in Philadelphia, and I was employed by them as manager of the finishing department in the fall of that year.

121 (Question repeated.)

I just answered that question as near as I could.

It was, as I explained, when I went there as superintendent of the finishing department, which was about Thanksgiving time, 1876.

Cross-int. 35. Can you testify of your own personal knowledge that any full-size chairs with the slotted bars G on were made except the three which you have stated were made—one in black walnut and the other part black walnut and part white wood and the third, which was rougher?

Ans. I have already answered that question to the best of my ability. I can't give any more explanation.

Cross-int. 36. Answer it again.

(Question repeated.)

Ans. Yes.

Cross-int. 37. How many, and when?

Ans. Well, there was some made when we first started in. As I explained before, Mr. Hitchcock—he wanted to make it this way—like Complainants' Exhibit Complainants' Chair—on account of there being no machinery in the factory to get out the slotted bars. They made some chairs like what we call the "knock-down" and sent them up to Chicago, and we fitted up those chairs and sold them. We got the slotted bars in Chicago. I don't remember the number of them, and we have got some of them yet. In the meantime we changed to this style here, Exhibit Complainants' Chair. I don't remember what number of chairs were made in that way, but I know that some of them were made at first that way, because I put on the slotted bars myself—I and another party.

Cross-int. 38. Can you tell the month or the season of the year when you put those slotted bars on? If yea, also state the year.

Ans. I can't tell the day of the month or the month, either, but it must have been after the date of my application. I don't remember the season of the year exactly. My reason for saying it was after the date of the application is that Mr. Hitchcock wasn't interested till some time before filing the application, and he was one of the members of the Ford-Johnson chair factory.

Cross-int. 39. And he was interested, was he not, at the time of making the three chairs above referred to—one of black walnut, one of black walnut and white wood, and the third a rougher one?

122 Ans. I have already explained that he was not interested at the time I made those chairs referred to.

Cross-int. 40. Where are those chairs now?

Ans. I don't know exactly. I sent one of them down to the factory of Ford, Johnson & Co. at the time that they started to make those—that is, at the time Mr. Hitchcock became interested—and the other one. I don't know where the others are. I stored them for a good many years with others, including a chair like this one here—Exhibit Parker Chair. The last I see of them was last spring. Me and Mr. Waite—this gentlemen here (one of the complainants)—were looking amongst a lot of experimental chairs for some chairs that he wanted at 1003 West Monroe St., Chicago. I see the chairs referred to there—some of them—and also part of

this chair here (Exhibit Parker Chair)—that is, the parts I saw at that time was the base, the seat, and the handle. They were there with a lot of other old truck—that is, about a wagon load experimental chairs of different kinds. About that time I got disinterested in high chairs, and when I moved from there to La Grange I didn't take those things with me. At least, there was a good deal of that stuff I didn't take. I took some models—parts of models—that I thought would be useful later.

Cross-int. 41. Did Mr. Waite take any chair or parts of chairs at that time? If yea, state what he did take.

Ans. I disremember what he took, but there was some of those chairs or parts of chairs that Mr. Waite told me would be valuable to him, and wanted me to ship them East. I believe Mr. Waite was there afterwards or some party from Thompson, Perley & Waite and examined those chairs and the stuff in there. I wasn't there, and don't know what they took. This Mr. Waite can explain.

Cross-int. 42. Did you ship what Mr. Waite said would be valuable to him; and, if yea, what did you ship?

Ans. I didn't go according to his instructions at just that time. My wife was sick down East, and I had to attend to her, and I let the matter drop—in fact, I forgot all about it. I don't know what Mr. Waite took. I told him to take what he wanted. I wasn't there; was East for awhile.

Cross-int. 43. Did Mr. Waite say that he wanted that Kenna chair or parts of it that you found among that old stuff?

123 Ans. Well, he was entitled to all of it, as he bought out all of my inventions previous to that—all my inventions in convertible chairs—and it was understood that he was to have all my experimental work and in convertible chairs.

Cross-int. 44. How long had that old "truck" been in that place when Mr. Waite looked it over with you last spring?

Ans. Well, there was experimental chairs — had been accumulating since the winter of 1876. Sometimes I would remove them for a day or two to look them over and put them back again; but when I dissolved partnership with Mr. Hitchcock the Ford-Johnson—one of the Ford-Johnson wagons took all this stuff—experimental chairs, and so forth—from the store to the barn of my residence. It was a double team, and the wagon was full up; chairs of this size, some smaller and some larger—experimental chairs of all kinds. It was January a year ago. I think it was the 15th of January, to the best of my remembrance.

Cross-int. 45. Don't you recollect, Mr. Kenna, that Mr. Waite told you that he wanted that Kenna chair—experimental chair?

Ans. I don't remember that he referred to any particular chair any more than—well, he was interested in all of it. There was some parts that he did examine more thorough than others, and I believe it was understood that I was to send him all the stuff that was there that pertained to carriage chairs. I don't remember of him referring to one part more than to the others.

Cross-int. 46. What particular part did he examine more than the others?

Ans. I don't remember exactly. I think it was the top—well, different parts. I didn't notice exactly. I was looking for something on my own account, and I see Mr. Waite have those chairs in his hands. His hands were all full of dust, and he pointed out some parts that he said would be valuable, and I wasn't interested in that class of chair any more and I didn't pay much attention.

Cross-int. 47. What parts did Mr. Waite have in his hands when you saw him?

Ans. Well, it was just as if he took hold of that lot of chairs there (pointing to the models and chair exhibits in the case) and rooted around—had his hands all full of dust. That is all that I know about it. Then I think Mr. Waite told me to send the whole thing,
124 send down the whole pile there. He gave me to understand that he had to look out for sharks, and didn't know when he would want to use them. That's about the understanding.

Cross-int. 48. You have information, have you not, that the whole pile was shipped to Thompson, Perley & Waite, and that they have what constituted that pile now at their factory?

Ans. I have got no information of the kind from anybody except what you remarked now.

Cross-int. 49. Haven't you some information that that pile has been shipped away?

Ans. No, sir.

Cross-int. 50. Have you been there lately?

Ans. I haven't been there since I left there—since I left the house. I mean since I moved to La Grange.

Cross-int. 51. How long since you have been in Baldwinville, in this State—the factory of Thompson, Perley & Waite?

Ans. I have never been there that I know of. I may have passed there on the road, but I don't know anything about the factory. I never got off at Baldwinville at all. I don't know what road it is on.

Cross-int 52. That Kenna experimental chair that was there when Mr. Waite was "rooting around" was made like the drawing of the Kenna patent, was it not?

Ans. Well, there were several there—different ways, different changes, and so on. I don't really remember. There was one, I know, was like this one (Exhibit Parker Chair), and there was another with the handle on the other side. I used to make a rocker out of it—the same handle. There was another one a little bit different from this (Parker chair), and I made a handle out of this part (indicating one side at the rear).

(Answer objected to as not responsive.)

Cross-int. 53. Question repeated.

Ans. What chair is that you have reference to?

Cross-int. 54. You say in answer to cross-int. 40, referring to the three chairs which you testified were made like the drawing in the Kenna patent with the slotted bars on, that the last you saw of two of them was last spring when Mr. Waite, one of the complainants in

this suit, was at your place "looking amongst a lot of experi-
125 mental chairs." Now, state if those two chairs, or one of them, at least, was not in condition to clearly illustrate the chair you first made with the slotted bars.

(Objected to because the defendants' counsel is mistaken in understanding the witness's 40th answer.)

Ans. Well, that I couldn't say positively.

Cross-int. 55. You say that you recollect some parts of a chair among that lot like or resembling Exhibit Parker Chair. Will you state how long those parts had been there?

Ans. Well, they were in the regular routine of my experiment. I would sit around and make sketches and make changes; sometimes I would have this chair before me for a half an hour or an hour—perhaps two days or a week. Perhaps I would return it to the pile again and wouldn't see it for a month—two months—take out one or two or half a dozen of the others and have them standing around just like these chairs here. When I got through looking at them I would return them to the pile and so on. I was all the time experimenting. I guess that's about all I can say on the matter.

Cross-int. 56. Now, Mr. Kenna, tell me how long a time you were experimenting on this chair like Exhibit Parker Chair, how long it continued, when you commenced, and when you last stopped.

Ans. Well, it was after Mr. Hitchcock got interested in this patent that I first started, and I had it changed in a great many ways. I can't tell you the date, but it must have been—it's a good while ago, because Mr. Hitchcock was anxious for me to make a rocker out of it, as well as a carriage and high chair, and I think Mr. Hitchcock offered me $400 to $600 for it. I had an offer of some kind, $300 or $400 or $500. Later on I sold my interest in the chair to Mr. Hitchcock—that is, my entire interest—with the understanding that this improvement would go with the invention which I was then after being working on for a long time.

Cross-int. 57. These parts of chairs were kept among other experimental chairs until after you left there, were they not?

Ans. I disremember now where it was kept, but before I sold my right to Mr. Hitchcock or Ford, Johnson & Co.—it's all the same—it stood alongside of my desk for a long time while I was experimenting and working on them. My desk and work-bench were in the same room, so that it was right on a line where I used to
126 work and experiment and sit down and study. Mr. Hitchcock examined the chair several times previous to buying the invention.

Cross-int. 58. You mean by buying the invention the time when Mr. Hitchcock bought all your interest in the concern, do you not?

Ans. No, sir; he didn't buy all my interest in the concern; he wanted to. He bought my interest in those chairs that I have just explained—those inventions that I have just referred to.

Cross-int. 59. When did he make this purchase?

Ans. I think it was in August, 1881—the 15th of August, 1881, I

think, was the date of that affair. I won't be positive. It was some time ago. No, I guess it must have been later. I can't remember the date of that. The assignment was recorded. It can easily be found.

Cross-int. 60. The last time you recollect seeing parts of that chair they were separated and among a lot of that old truck, if I remember you rightly; is that so?

Ans. Well, as to them being separated I couldn't say exactly, there were so many I had there; but as a general thing I used to tag those inventions and date them and put them away and anything that was of value I took pretty good care of it up to the time I sold out my other inventions to Mr. Waite.

Cross-int. 61. Don't you recollect, Mr. Kenna, that you have testified, in substance, that you only found parts of a chair resembling the Parker chair at the time Mr. Waite was there?

Ans. Yes; and don't you recollect that I said I had them in three or four different ways?

Cross-int. 62. When did you have them in the last way, if you recollect?

Ans. I wish you would please explain what you mean by "the last way."

Cross-int. 63. Not being present at the time you experimented on the chair, I cannot make the explanation you ask for, but, since you do not recollect yourself, I will ask you if you recollect how many different parts the chair was in when you last saw them.

Ans. Well, I didn't pay much attention to any of them, but I think that the rounds, here, separated from the base part. I know they were separate in some way.

127 Cross-int. 64. You didn't pay much regard to them, did you?

Ans. Well, I did up to a short time previous to Mr. Waite coming there.

Cross-int. 65. How does it happen that you let Mr. Waite take away what you say Mr. Hitchcock purchased?

Ans. I don't know of him taking them away, but I understood from Mr. Hitchcock that Mr. Waite owned it—this chair that I referred to that I sold to him (patent in suit)—and all the improvements that he got from me that he understood was to go with the transfer to him, and Mr. Waite told me something to that effect himself. I don't remember the exact words.

Cross-int. 66. Please look at the assignments marked Complainants' Exhibit Assignments and state whether you ever made any other assignments to Mr. Hitchcock than what are there.

Ans. Well, I know I made him other assignments than what are there. I made a good many assignments to Mr. Hitchcock.

Cross-int. 67. Do you know that you made him any other assignments for convertible chairs?

Ans. Well, I made him a good many assignments. There was some private business that I don't feel like exposing here.

Cross-int. 68. Look at Complainants' Exhibit Kenna Patent in

suit and state what function the rod *f* performs in that patented chair.

Ans. Well, that is the support for the back of the chair. Well, I mean the—well, I can explain from a model. Have you got a model? I may make a mistake from a small drawing like this.

Cross-int. 69. I notice in the second claim these words are used, "the yielding rest or support F." What was that, and how did it work?

Ans. It worked bully. It is a stretcher and a catch. You get the bail in under the stretcher as a cross-stretcher and the catch holds it in position; but the stretcher and the bail is the main support for the chair when in an elevated position. I should have said the back support.

Cross-int. 70. How large a rod did it require?

Ans. Oh, the ordinary size to be necessary for a support in a chair of that kind.

Cross-int. 71. How large a rod did you use in the chair that you made?

128 Ans. Well, here is one of them (pointing to Exhibit Complainants' Chair).

Cross-int. 72. Did you ever make a chair with an iron rod for the support to the back of the chair?

Ans. I did; lots of them; but they were models.

Cross-int. 73. The model you sent to the Patent Office had a wire rod, did it not, marked *f* in the patent?

Ans. Well, this bail was wire; this here (the supporting frame) was wire and this (the supporting stretcher) was wire and the table was brass, if I remember aright. I have had a good many models made out of both brass and iron—I can't remember all now—and some were all wood.

Cross-int. 74. Would chairs like the three experimental chairs which you have stated were made like the Kenna patent in suit be safe and operative chairs if the slotted bars were left off? For illustration refer to Defendants' Exhibit Kenna Patented Chair. State if that chair would be a safe and operative chair if the slotted bars were taken off.

Ans. This chair don't look like my patent in certain places.

Well, of course the bars have got a good deal to do with the locking of it and the rod (the supporting rod).

(To the first branch of the question:) Not in those particular chairs.

(To the last branch:) No, sir; it ain't safe anyway. It would be all right if you had the bail resting directly under the supporting stretcher of the upper frame and the spring fastening which I used.

Cross-int. 75. Are not the slotted bars absolutely necessary to make a safe and operative chair of this particular construction, even though the bail and stretcher were made in a different manner or in the manner that you have indicated in your last answer?

Ans. Well, you take this form here (Exhibit Complainants' Chair)—it is safe without the slotted bar.

Well, yes; those bars or the equivalent.

Cross-int. 76. If the slotted bars were taken off of Defendants' Exhibit Kenna Patented Chair would not the chair seat tip over and the bail fall down in any attempt to use it when in an elevated position?

Ans. That chair is liable to tip either way, the way it is constructed now, if you had the slotted bars off.

129 Cross-int. 77. Then it wouldn't be a safe or operative chair?

Ans. That chair ain't a safe chair anyway.

Cross-int. 78. (Question repeated.)

Ans. That chair? No, sir; it ain't safe now with the slotted bars on.

Cross-int. 79. Did you ever make a chair with the slotted bars on that would be a safe and operative chair if the slotted bars were removed from that chair?

Ans. I did.

Cross-int. 80. Did you ever remove the slotted bars from the chair to try it?

Ans. I did.

Cross-int. 81. How was it made? Was it made like the chair shown and described in the Kenna patent?

Ans. It was made like this one (Exhibit Complainants' Chair) and several other forms that I made that ain't here now.

Cross-int. 82. Did you ever make a chair of the style shown in the Kenna patent in suit, having the slotted bars G on, that would be a safe and operative chair if the slotted bars were removed from such chair?

Ans. Well, I disremember now whether I went as far at that with it. I experimented a good deal. I couldn't give my opinion. I made this chair without the slotted bars. I disremember how it did work now, but I never did make a chair but what worked all right, and I have made a good many of them.

Cross-int. 83. Do you recollect of taking off the slotted bars from one of your chairs; and, if yea, how did it work without them?

Ans. The fact of the matter is the chair that I referred to I never took off the slotted bars because I never had them on. It was a chair that I—some of the first lot that I got from the factory that we were to use the slotted bars on. There were only a few of them.

Cross-int. 84. State how long ago, if ever, and when first you saw a chair in the State of Massachusetts like Defendants' Exhibt Parker Chair.

Ans. I saw a chair something similar to that, I think. It was last spring—February or March—I think, of this year, in the State of Massachusetts. That was the first one of them I have seen outside of my own make.

JOSEPH W. KENNA.

Attest: WILLIAM A. COPELAND,
Special Examiner.

130 *Deposition of Herman Vanderploeg.*

Direct examination by J. E. MAYNADIER, Esq., of counsel for complainants:

BOSTON, *Oct.* 11, 1886.

Int. 1. What is your name, age, residence, and occupation?

Ans. Herman Vanderploeg; 27; Chicago, Ills.; attorney-at-law.

Int 2. Did you formerly have to do with the chair business; if so, when and where?

Ans. I worked at chair-finishing at J. S. Ford, Johnson & Co., Chicago, for about four years—from 1874 to the latter part of 1878; that is about the time.

Int. 3. Please look at the model now shown you—Exhibit Model of Kenna Patented Chair—and state what you know about chairs like that.

A. Well, the first chair of this kind that I ever saw, to my recollection, was at the place of J. S. Ford, Johnson & Co. some time in 1877, made by Mr. Joseph Kenna, with the exception that the top was square, and it was in a rude walnut form.

Int. 4. How close do you fix the date and how do you fix it?

Ans. I remember that it was in 1877 for the reason that Mr. Kenna came to work there in 1876—about Thanksgiving day. I further remember that he commenced to work on chair models almost as soon as he got to work there during that winter, and that the chair model shown to me, with the exception that I have above stated, and with the further exception that I, to the best of my recollection, believe that this spring here was perpendicular; and I further remember about the date because I left there in 1878, and I recollect distinctly that quite a time prior to that I saw some of those chairs in a completed condition. I can further fix the date by an incident that occurred about the time, in the fall of 1877, when I was working in the finishing room. The incident that I recollect is that a gentleman working in the shop at that time flung a brush at Mr. Kenna, which struck the varnish can, when he had one of those chairs in his hand.

Int. 5. By Joseph Kenna do you mean the witness who has just testified here to-day, whose full name is Joseph W. Kenna?

Ans. Yes, sir; I mean the same man.

131 Cross-examination by THOS. H. DODGE, Esq., of counsel for defendants:

Cross-int. 6. The spring that you saw on the Kenna chair model was perpendicular, you say. Will you make a sketch of the form of the spring, as near as you can, and mark it F, and the bail B and the rod *f*?

Ans. I will do so.

(The witness makes the sketch requested, and the same is put in evidence and marked Defendants' Exhibit Vanderploeg Sketch, W. A. C., sp'l ex'r.)

Cross-int. 7. Look at Defendants' Exhibit Model of Kenna Patented Chair and state if that would be a safe and operative chair if the slotted bars were taken off.

Ans. I couldn't say, as I have no experience in those matters.

Redirect examination by J. E. MAYNADIER, Esq., of counsel for complainants:

Int. 8. How did the catch which held the bail in the first Kenna chair which you saw resemble or differ from the catch in this chair, Exhibit Complainants' Chair?

Ans. To the best of my recollection, the sheet on the inside was on the outside, as shown in the drawing, I believe, or at least as intended to show, and was fastened in some way without this hook.

Int. 9. What work, if any, did you do on the Kenna chair?

Ans. I don't remember of doing any other work, excepting that I may have filled the walnut chair that I say I saw, and I am not positive of having done that, but that is my present impression.

Int. 10. Look at the rough sketch I now show you and state how near that comes to your recollection of the bail that is marked B and the cross-rod or stretcher that you see a section of and the sheet-metal catch marked F. Before answering the question, please state if you understand the drawing or not.

Ans. I do not understand the drawing.

(The sketch is put in evidence and marked Complainants' Exhibit Vanderploeg Sketch 2, W. A. C., sp'l ex'r.)

HERMAN VANDERPLOEG.

Attest: WILLIAM A. COPELAND,
Special Examiner.

132 *Deposition of Edward J. Reed.*

Direct examination by J. E. MAYNADIER, Esq., of counsel for complainants:

BOSTON, *Oct.* 11, 1886.

Int. 1. What is your name, age, residence, and occupation?

Ans. Edward J. Reed; 29; Chicago, Ills.; chair furniture finisher.

Int. 2. When did you first see a chair like this and where, and who made it—Exhibit Model of Kenna Patented Chair?

Ans. I saw a chair like this in the spring of 1877, at Ford, Johnson & Co.'s, Chicago. I was working there at the time. Joseph W. Kenna made it.

Int. 3. How do you fix the date?

Ans. Mr. Kenna came there in the fall of 1876, and he wasn't but a short time there before he was working on these models.

Int. 4. Did you ever do any work on this kind of chairs?

Ans. Yes; I finished the first chair that was ever turned out there.

Int. 5. When was that?

Ans. It was in the year 1877 that I finished the first chair. It was in the latter part of the year.

Int. 6. Do you recollect what those slotted bars were made of and what the color was in that first Kenna chair?

Ans. As far as I can recollect, they were made out of old hoop iron, and I bronzed them up out of composition gold bronze.

Cross-examination by THOMAS H. DODGE, Esq., of counsel for defendants:

Cross-int. 7. Do you recollect how the chair seat was supported when in its elevated position? Look at Complainants' Exhibit Vanderploeg Sketch 2 (which I understand represents a vertical section) and state if the rod *f* in that chair and the bail B and the plate F were made like those of the same letters in the sketch.

Ans. Well, I can't recollect whether it was this way or not, but I know the bail was supported under the stretcher, and that was caught by the spring, and that supported the seat when it was elevated.

Cross-int. 8. How large a rod of iron was employed as the
133 rod which you call the stretcher? Was it about the size of the rod in Defendants' Exhibit Kenna Patented Chair?

Ans. To the best of my belief, it was nearly as large; yes; it was as large.

Redirect examination by J. E. MAYNADIER, Esq., of counsel for complainants:

Int. 9. Do you understand that drawing shown you—Vanderploeg sketch 2?

Ans. I don't understand this; no. If I saw a drawing of a full-size chair I could tell better.

Recross-examination by THOMAS H. DODGE, Esq., of counsel for defendants:

Cross-int. 10. Look at Complainants' Exhibit Kenna Patent in suit and state whether or not you find in Fig. 1 of said drawing the same devices for supporting the chair seat when in an elevated position; and if they differ, state wherein they differ.

Ans. I think that is similar to the first one I done.

Cross-int. 11. Do I understand that you made the chair? If not, what do you mean by "the first one I done"?

Ans. The first one I finished.

Cross-int. 12. What prevented the bail in the first Kenna chair you saw from swinging in under the chair seat when the chair was used as a high chair?

Ans. The bail was caught by a spring that was under the rod.

Cross-int. 13. Did the spring support the chair seat?

Ans. The rod and spring both supported it.

Cross-int. 14. How much did the rod spring up when you pushed the bail into place?

Ans. That I can't recollect.

Cross-int. 15. You do recollect that it sprung up some, don't you?

Ans. I think it did; yes, sir.

Cross-int. 16. After the bail was pushed into place the rod sprung back and held the bail, did it?

Ans. The rod held the bail; of course it did.

Cross-int. 17. You couldn't get the bail into place without springing the rod up, could you?

134 Ans. That I don't recollect. The bail used to fit right under the rod.

Cross-int. 18. Was the spring between the rod and the bail?

Ans. I think the spring used to come up this way—spring up this way.

Cross-int. 19. It worked somewhat like the device in Defendants' Exhibit Kenna Patented Chair, did it not?

Ans. I think the spring used to come over this way (over the rod and down back of the bail).

Cross-int. 20. Then, if I understand you, the spring extended back from the rod over the top of the bail and down back of the bail when the chair was in its elevated position. Am I correct?

Ans. Well, of course, it didn't go down too far; just far enough to hold the bail in position and snap back when the chair was used in its elevated position. The spring used to close with a snap.

Cross-int. 21. The top of the bail was three or four times the diameter of the rod, was it not?

Ans. I don't recollect that, whether it was or not.

Cross-int. 22. Was the bail as large as the bail in the exhibit to which you have referred—Defendants' Exhibit Kenna Patented Chair?

Ans. Yes; I think it was.

Cross-int. 23. The spring had a bearing upon the top and both sides of the bail, did it not?

Ans. I think so; yes.

E. J. REED.

Attest: WILLIAM A. COPELAND,
Special Examiner.

(Adjourned.)

135 *Deposition of Joseph P. Livermore Resumed.*

BOSTON, *Oct.* 21, 1886.

Int. 13. Please read the 15th and 16th interrogatories and answers of Mr. Alden, and then answer the 15th interrogatory to Mr. Alden.

Ans. The question asks if it would make any substantial difference if a portion of the front legs in the Caulier patent were attached to the chair frame and the hinge placed lower down, the rear legs being modified accordingly. No suggestion is made as to the object of making such change, nor as to what modification should be made in the rear legs. If any substantial portion of the front legs were rigidly fixed to the seat it is obvious that a change would have to be made in the rear legs, and this change would involve numerous other changes, both in construction and mode of operation, and would result in a radically different chair from the Caulier chair,

The resulting chair would depend upon which one of the several modifications that might be made in the rear legs was adopted.

The Harris & Childs chair, it is true, does show the hinge placed lower down than in the Caulier chair, and is a good illustration of the numerous other changes involved, resulting in the Harris & Childs chair, which is totally different in construction and mode of operation from the Caulier chair.

Following out another modification or the rear legs involved by the change of location of the hinge on the front legs, we get the Patten chair, also radically different from the Caulier in construction and mode of operation; and by another series of changes, devised to meet the requirements of changing the location of hinges on the front legs, the Kenna chair is produced, also radically different in construction and mode of operation from the Caulier chair.

I am therefore of the opinion that while a mere change in the location of the hinges, if it could be made without other changes, would be a matter of taste and skill, such a change cannot be made without involving other such numerous and radical changes as to pass far beyond the reach of mechanical taste or skill.

Int. 14. Please read the 18th to the 20th interrogatories and answers of Mr. Alden, both inclusive, and state how far you agree with or differ from his statements in those answers.

136 Ans. I do not agree with the answer to the 18th, that the arms *h* form a substantial part of the support of the chair in the Gleason patent, and that these arms *h* differ from the bail of the Kenna chair mainly in the position occupied relative to the chair frame. I think that the function of the arms *h* is not to contribute to the support of the high chair, but to hold the part D with the cross-rod *a* in position on the supporting frame when used as a high chair, and also to assist in guiding the supporting frame when moved to convert the chair and to assist in holding the supporting frame when used as a low chair by means of the projections *p*, as shown in figure 3. If the arms *h* formed a substantial part of the high-chair support, I should agree with answer to Int. 19, that it makes no difference to which part of the chair the swinging support (arms *h*) is pivoted.

In answer to question 20 I should say that the piece *h* is held in place by the link *g* and not by the notch *i*.

Int. 15. Please read the 31st interrogatory and answer of Mr. Alden and state wherein you agree with or differ from his statements in that answer.

Ans. I do not agree with him that in the 2d claim of the Kenna patent the single new element mentioned is the yielding rest or support F, nor that the only feature of novelty of this support F on which the novelty of the entire claim depended was the fact that it was a yielding rest or support for the chair frame. I find nothing in the Kenna patent to indicate that the catch F is anything more or less than a fastening to hold the bail in position. This catch is not represented in detail in the Kenna patent, as it is evident that any competent mechanic would have no difficulty in making it.

With regard to the remarks on the relation of the claims allowed to those rejected, it seems to me plain that the original 4th and 7th claims (the 1st and 2d of the patent) were held to cover the two combinations of the Kenna chair, and that the other claims were vague and either covered the same thing or attempted to cover more, so that unless limited in some way they might be broad enough to cover other chairs, and for this reason were rejected by the office, and the rejection was acquiesced in by the applicant.

Int. 16. Please read Mr. Alden's 33d, 34th, and 35th interrogatories and answers and state how far you agree with or differ from him.

137 Ans. I agree with answer to Int. 33, that the front part of the Patten chair frame is substantially like the front part of the Kenna chair frame, and that the hinging of a chair frame to a supporting frame at a point below the chair seat was not new after Patten. I also agree in substance with answer to Int. 34, that the Patten chair, when used as a carriage, is supported on four wheels, substantially like the Kenna chair; and I should also agree with answer to interrogatory 35, that the mere choice of the point or distance at which the hinge is located with relation to the chair seat was a matter of taste so long as this change of location could be made without substantial change in the construction, relations, and mode of operation of the other parts.

Int. 17. In Mr. Alden's 37th answer he lays stress upon his assertion that the slotted bars G are essential elements in the 2d claim of the Kenna patent, and also upon the fact that the bail or supplemental frame in Exhibit Parker Chair does not answer as a handle for the carriage. Please explain your opinions as to these matters.

Ans. I am of the opinion that the combination in the 2d claim requires something to prevent the chair from tipping forward on the supporting frame. The bars G are shown in the patent as performing this function, but I do not agree with Mr. Alden that it requires exactly these bars to make the combination of the 2d claim operative. It seems to me apparent that the inventor considered the bars a novel and useful device for performing this function, and he therefore based a specific claim on this feature. It seems to me equally apparent that he was aware that various substitutes might be employed for performing this function, and for this reason did not specify this device in his 2d claim.

It is true that the swinging frame or bail in the Parker chair does not perform the function of a push-handle for the low chair, which is one of the functions of the Kenna bail, but does perform the other functions of the Kenna bail—that is, constitutes the supplemental support between the chair and the supporting frame and operates in substantially the same way in performing this function—and I am, therefore, of the opinion that this frame of the Parker chair is in substance the element described as the bail E in the Kenna patent.

138 Cross-examination by THOMAS H. DODGE, Esq., of counsel for defendants:

Cross-int. 18. You have stated in your testimony that you are a solicitor of patents. Do you not know that both the practice of the Patent Office and the courts is to the effect that when a patentee specifies different parts of his machine by letter in his claim that the construction of such claim is of a limited character, and much more so than when claims of a different wording are presented?

(Objected to as obviously a question of law.)

Ans. I know but little of the way this matter is considered by the courts, but believe that the Patent Office considers a claim referring by letter to different parts as narrower than one without letters of reference.

Cross-int. 19. What do you find the functions of "the bail E" in the Kenna patent to be? State all the functions, and examine, before making your answer, the Kenna specification, claims, and particularly figures 1 and 3 of the drawings of the patent.

Ans. The only function that I find clearly described is that of supporting the chair at the rear when in a elevated position. From figure 3 of the drawings it appears that it also performs the function of a push-handle for the low chair, but I do not find this mentioned in the specification.

Cross-int. 20. Would it, in your opinion, be a substantial difference in the Kenna chair if what is called the bail E was hinged directly to the rod F, with its lower ends separate from the frame A and extended so that when the chair was in its elevated position they would rest on the floor to support the chair seat in its high position, as shown in figure one of the drawings?

Ans. If there were nothing to fasten it to the supporting frame this change would, in my opinion, be a substantial one, although the chair would, in my judgment, still contain much of the novelty of the Kenna chair.

Cross-int. 21. Would it in that case, in your opinion, contain the combination embraced in the 2d claim of the Kenna patent?

Ans. Not if it were perfectly free to turn on its hinged connection with the rod *f*—that is, if there were nothing to fasten it in place between the chair seat and the floor.

139 Cross-int. 22. If it was connected by means of links to the frame A so as to be prevented from spreading on the floor would it then contain the combination described in the 2d claim of the Kenna patent, in your opinion?

Ans. In my opinion, it would. To make my meaning clearer I might say that if the hind feet or part of the supporting frame A below the joint of the bail were sawed off and the bail lengthened below the joint to the floor I think it would still be substantially the Kenna chair.

Cross-int. 23. Would it, in your opinion, embrace the combination covered by the 2d claim of the Kenna patent if the bail E was simply hinged to the rod *f* and the lower ends disconnected from the

supporting frame A and such ends connected by a round and provided with an ordinary hook to hook into an ordinary eye on the back round of the supporting frame when the chair was in its elevated position?

Ans. It would if the hook and eye held the bail so as to give a firm support to the chair.

Cross-int. 24. In such case it wouldn't matter what form of supporting frame A was employed or to what part of the frame the eye was attached or how long the hook was, provided they held the swinging support so that the ends which rested on the floor could not slip out of place either forward or back, would it?

Ans. Not so long as the frame afforded a rigid connection from front to back across the lower part of the chair so as to give stability to the high chair.

Cross-int. 25. You are testifying, are you not, of a swinging support the lower ends of which alone rest on the floor when the chair is in an elevated position to support the seat?

Ans. I find it difficult to clearly picture a chair from the verbal description in the question and am not certain just what is meant. I was testifying with relation to a chair formed in my own mind from the description given. In such a chair the frame A should have the front legs and a part rigidly connected with them extending across to the back of the chair, and the bail when turned down on to the floor should be fastened with substantial rigidity to this rear part by hook and eye, the length of which would be immaterial so long as it did fasten the bail rigidly to the rear part of the supporting frame.

140 Cross-int. 26. In other words, you mean, do you not, that the downwardly swinging support to the chair seat when its lower ends rested upon the floor to support the chair seat when in its elevated position should be connected to the supporting frame, of whatever form it might be, by hooks or links so that the leg-supporting parts would be held securely from either spreading apart or slipping towards each other? Am I correct?

Ans. No; it requires more than a prevention of spreading or closing together. There must be something to prevent collapsing, as it were, by the chair revolving forward or back. As I understand, the frame you have described would be a mere parallelogram hinged together at four corners and would have no rigidity. It is further needed that a rigid brace should be placed between the sides of the parallelogram, and that is what I meant by saying that the main frame must have a rigid part extending from front to rear of the chair and securely fastened to the bail when placed as you have stated.

Cross-int. 27. You understood, did you not, that the slotted bars G were to be used to prevent the chair from swinging forward?

Ans. I didn't mean the chair frame lifting up and turning over, but that the supporting frame, if it had only what I understand you have mentioned, would have no fore-and-aft rigidity. The bars G would not help this, as far as I can see.

Cross-int. 28. Supposing the parts marked *a* in the patent were

cut off just below the lower round shown in Fig. 2 and then a swinging support hinged to the rod *f* employed for supporting the chair in its elevated position, with its lower ends resting on the floor with hook-and-eye or link device for connecting it with some portion of the supporting frame A to keep it in its desired position on the floor, would the chair then, in your opinion, contain the combination embraced in the 2d claim of the Kenna patent?

Ans. It would if the fastening prevented up-and-down movement of the parts *a* with relation to the bail extending from the chair to the floor.

Cross-int. 29. If the hook simply hooked into an eye on a round extending through the lower ends of the parts *a* when cut off, would it contain the combination embraced in the 2d claim of the Kenna patent?

141 Ans. I am of the opinion it would if the hook and eye were properly arranged.

Cross-int. 30. Would it make any difference in such case if, instead of the swinging support being hinged to the rod *f*, it was extended up and hinged in a secure manner directly to the rear under side of the chair seat, the other parts of the chair, of course, remaining the same as in your last answer?

Ans. It would not.

(Noon recess.)

Cross-int. 31. Are not the slotted bars absolutely necessary to hold the chair in its elevated position, and do you not find it substantially so stated on the first page of the Kenna specification?

Ans. These bars or some substitute for them are necessary, and it is stated that they do, in connection with the bail, hold the chair securely in the high position.

Cross-int. 32. The bail E in the Kenna patent performs two functions, does it not—namely, for holding the chair in an elevated position and also as a push-bail when the chair is used as a carriage?

Ans. It does.

Cross-int. 33. In the Defendants' Exhibit Parker Chair, to which your attention has been called, the push-bail does not perform any other function, does it, than that of pushing the chair when used as a carriage?

Ans. It does not.

Cross-int. 34. Referring to Defendants' Exhibit Kenna Patent Chair, when the bail is turned up and pushed under the rod the latter yields or springs up, does it not?

Ans. I think it does slightly.

Cross-int. 35. Answer the same question as to Defendants' Exhibit Model of Kenna Patented Chair.

Ans. It does.

Cross-int. 36. When the bail is in the position as respects the rod referred to in your last two answers does not the chair seat have a yielding rest or support?

Ans. Practically it does not—that is, the support does not yield

appreciably under the weight of the occupant, but merely yields slightly to the strain of bringing the parts into a position for which they are apparently not properly adjusted.

142 Cross-int. 37. I did not ask you as to the yielding of the parts to the occupant of the chair. Will you state if in both the chair and the model, to which your attention has been called, when the bail is brought into position under the rod, if the support to the rear part of the chair does not yield to permit the bail to take such a position?

Ans. It yields only so far as all matter yields when subjected to strain. As a matter of practical construction, the parts are rigid.

Cross-int. 38. As a matter of fact, do you not find that the rod in both cases does yield?

Ans. I do; and I have so stated.

Cross-int. 39. Will you please look at and examine the Kenna patent in suit and state what position the bail marked E occupies in relation to the rod *f* when in the elevated position shown in Fig. 1 of the drawings.

Ans. Directly under it.

Cross-int. 40. What prevents the bail E from falling over forward?

Ans. I should judge that the catch F, projected down at the front of the rod *f* to prevent the bail E from falling forward, but I would add that the slotted bars G are also shown in the drawing in such position as to prevent the bail E from turning forward.

Cross-int. 41. If the part marked F is not so made as to prevent the bail from swinging forward, then the slotted bars G perform an indispensable function in preventing the bail from swinging forward when the chair is in an elevated position, do they not?

Ans. The function is indispensable, and the bars G, as shown, might perform it.

Cross-int. 42. Can you say that they do not perform it?

Ans. I cannot.

Cross-int. 43. From your knowledge of mechanism and of drawings and of the description contained in the specifications of the Kenna patent, do you not find that the slotted bars G do perform that function and that nothing else does perform it.

Ans. No; I do not.

Cross-int. 44. Why not?

Ans. It is perfectly obvious from the description that the bail must be held from turning forward or backward, and the only thing spoken of as holding the bail is the spring catch F,

143 and it seems to me perfectly plain that a mechanic without further instruction could make the spring catch of proper shape to hold the bail. The reason I am not certain whether or not the bars G were intended to assist in holding the bail is because the different figures are somewhat inconsistent. Fig. 1 shows the bail E the full width of the space between the uprights *a* and doesn't show the catch J at all, but from Fig. 2 it would appear that the bail E was somewhat narrower, as the catch J is outside the bail E, but the bar G, to which the catch J is attached, is inside the bar *a* of the

frame, which would indicate that there was a slight inaccuracy on the part of the draughtsman in making Fig. 1. There are many ways in which the bail E might be prevented from turning forward in the high chair, and it seems to me wholly immaterial which one is taken.

Cross-int. 45. I did not ask you about the different ways that might be devised for holding the bail nor what would be obvious to mechanics. Do you not find in the specification of the Kenna patent that the slotted bars are employed for holding the bail in position when the chair is in its elevated position as shown in Fig. 1?

Ans. I do not.

Cross-int. 46. Do you not find these words in the specification: "It is evident that these slotted bars will hold the chair from turning up from its proper position and, in connection with the supporting bail, will hold the chair securely in the elevated position shown in figures 1 and 2 of the drawings when it is adapted for ordinary use as a child's high chair"; and how do you reconcile your last answer with this part of the specification?

Ans. I find them, and it seems to me a plain statement, that the bars and the bail hold the chair in position, and not that the bars hold the bail in position.

Cross-int. 47. Then you find, do you not, that the maker of the Defendants' Exhibit Kenna Patented Chair and Defendants' Exhibit Model of Kenna Patented Chair ought to have had the sides of the bail stand outside of the edge of the slotted bars G in order to conform with the chair shown in the Kenna patent in suit?

Ans. To conform exactly with Fig. 1, I do; but I regard the difference as wholly immaterial.

Cross-int. 48. I didn't ask you how you regarded the dif-
144 ference, and I will feel much obliged if you will hereafter confine yourself to the questions propounded. If, as a matter of fact, the slotted bars G in Kenna patent are the only devices employed in that chair for preventing the bail from swinging forward under the chair when used as a high chair, do you still persist in testifying that it is wholly immaterial whether the slotted bars G are outside of the bail E or not?

Ans. No.

Cross-int. 49. Then you now regard the position of the bars G as somewhat material to the operation of the Kenna chair under the circumstances named, do you not; and why did you testify that it was wholly immaterial?

Ans. Under the circumstances named I consider their position material, and I testified that it was immaterial because I was then assuming that the bars G are not intended to hold the bail, which I believe to be the fact.

Cross-int. 50. Did my question ask you to assume anything not stated in the question; and how is the court to know how to interpret your testimony if you assume things not stated in the question and give your answer upon such assumption instead of answering the real question?

Ans. Your question asked, in substance, if the model shouldn't have been made a certain way to conform with the chair shown in the Kenna patent, and I answered that I regarded it as immaterial, which is true as I understand the question and understand the Kenna patent. Your next question, 48, gives a distinct assumption that the bars are for holding the bail, and under this assumption—the one given in the question—I made an answer which was opposite to that given when no assumption was in the question. I answer the questions, as I understand them, as clearly as possible, and that is all I can do toward making myself understood by the court or anybody else.

Cross-int. 51. Now, will you state definitely whether or not you find anything in the Kenna patent (either shown or described) that prevents the bail E from swinging forward under the chair, excepting the slotted bars G?

Ans. I find absolutely nothing definitely and consistently shown or described for performing this distinct function of preventing the bail from turning forward.

145 Cross-int. 52. Then inasmuch as the chair would be inoperative without some device for performing this function, the patent is defective in this respect, is it not?

Ans. In my opinion, no.

Cross-int. 53. Is it your practice in drawing specifications for patents to show and describe necessary devices or to leave them to the conjecture of others who may have occasion to examine the patent which may be granted upon such specification or to make the patented article?

Ans. I intend to show and describe them, and if I describe a thing as holding another, I do not consider it necessary to say that one part holds it from moving it east and another part from moving west, if these things appear to me too plain to require minute explanation.

(Adjourned.)

BOSTON, *Oct.* 29, 1886.

Cross-int. 54. You have stated generally what you regard as the Kenna invention. Will you please embody the same in the form of a claim, as you understand the invention, so that I may clearly apprehend your meaning and thus lessen the time in which to complete your cross-examination?

Ans. I should state the claim as follows: A convertible chair composed of a chair frame—that is, a seat and legs fixed to it about the height required for a low chair; a supporting frame the height of which, together with that of the chair frame, will be suitable for a high chair, the said supporting frame being hinged to the lower end of the legs of the chair frame, so as to turn a quarter around in converting the chair; a supplemental frame interposed between the supporting frame and chair frame, on which the chair frame rests when used as a high chair, and a fastening that holds the supplemental frame in position to support the chair frame as a high chair.

Cross-int. 55. Has your testimony been given with the understanding and opinion as an expert that the claim which you have just given embraces the same devices and combination of devices, and no more, as the 2d claim of the Kenna patent in suit?

146 Ans. I have not been called upon nor attempted to construe the claims of the Kenna patent, but I am of the opinion that the claim I have just given does embrace the same combination of devices as, and no more than, that given in the 2d claim of the Kenna patent, and my testimony has been in accordance with this opinion.

Cross-int. 56. Has your testimony been given as an expert with the understanding that the 2d claim of the Kenna patent is the same or embraces the same combination, and no more and no less, as the claim presented in your answer to the 54th cross-int.?

Ans. It has.

Cross-int. 57. Will you compare the following claim, viz:

"The combination of the supporting frame A, composed of front standards *a'* and rear standards *a*, the chair frame B, pivoted thereto at its lower front corner, and the curved supporting bail pivoted at the lower ends of said standards *a*, substantially as described and shown," with the drawing and specification of the Kenna patent in suit, and state if such claim, in your opinion, embraces the same combination, and no more and no less, as the combination in the claim recited in your answer to the 54th cross-int., giving briefly the reasons for the answer you may make.

Ans. If the claim quoted were based on the Kenna specification it would, in my opinion, not embrace the same combination as the claim made by me. It has one less element, namely, the fastening device for the bail. I think, however, that it might be construed as the same in substance for the reason that a fastening device or some means for holding the bail in place is essential to make the other parts operative. Even, however, if the fastening device were construed into the quoted claim, I think it might be held to, and in my opinion would, differ substantially from the claim recited by me, for the reason that it defines the supporting frame A from its construction, namely, that it is composed of front and rear standards, and defines the bail E likewise by its specific construction, namely, that it is a curved bail, while in the claim given by me these parts, namely, the supporting frame and bail, are defined or limited by the functions they perform and the operative relations of each to the other elements of the combination.

Cross-int. 58. Then it is your opinion that where the functions of the element are stated in the claim those functions must be

147 performed in any given structure by the same device in order to be the same combination. Am I correct?

Ans. It is—that is, by the corresponding device of the given structure.

Cross-int. 59. And if such corresponding device did not perform the same functions in a given structure, such structure would not be regarded as an infringement of the former combination, would it?

Ans. This it seems to me to be a question of law. I may say, however, that, in my opinion, if the devices of a given structure did not perform the same or analogous functions as those of a patented structure they would not embody the same invention.

Cross-int. 60. In your previous examination, if I have understood you correctly, "Defendants' Exhibit Illustrative Chair" would be, in your opinion, an infringement of the second claim of the Kenna patent in suit when the lower hinges are operative and the upper hinges rigid, but when the lower hinges are made rigid and the upper hinges operative the same chair would not, in your opinion, be an infringement of the second claim of the Kenna patent. I find upon measuring the distance between the two hinges that it is six inches. If the lower hinges were raised three inches higher than they are now, would the chair then embrace the same combination and be an infringement, in your opinion, of the second claim of the Kenna patent?

Ans. I have not previously, to my recollection, expressed an opinion as to whether or not the illustrative chair in either form infringed the Kenna patent. Under the supposed condition of the hinges raised three inches higher I think the combination of the Kenna patent would be embraced in the illustrative chair, and, in my opinion, it would infringe the second claim of the Kenna patent.

Cross-int. 61. If the lower hinges were raised five inches higher would the chair then, in your opinion, embrace the Kenna invention described in the specifications of the patent in suit and more particularly specified and set forth in the second claim thereof?

Ans. Whether or not it would embrace the Kenna invention set forth in the second claim depends, in my judgment, upon the construction given to the words "pivoted at its lower front corners," referring to the chair frame. The parts of the illustrative chair with any location of the hinge at or between the extremes
148 given operate in substantially the same way as the corresponding parts described in the patent, both in converting the chair and in supporting it in both high and low positions, and for this reason I am of the opinion that the illustrative chair with the hinge one inch below the chair seat or even at the chair seat does embody, in substance, the invention shown and described in the Kenna patent, although in my answer to interrogatory six I testified that with the hinges at the chair seat it did not embody the Kenna invention. While the operation of the parts now appears to me to be the same, irrespective of the location of the hinges, there is an important difference in the result when the hinges are placed at the chair seat or pivoted as low down as consistent with the use of the chair as a low chair, viz., when hinged at the chair seat the supporting frame when turned down to make a low chair extends horizontally a distance from the front of the chair seat about equal to the full height of a high chair, and thus sticks out behind the chair and occupies a floor space behind the chair nearly as great as that occupied by the chair itself, but when hinged at the lower end of the front legs of the chair frame the supporting frame when

turned down occupies scarcely greater space than the chair itself and does not stick out behind the chair frame in an objectionable manner. This wide difference in result led me to say in answer to interrogatory 6 that when the supporting frame was pivoted at the chair seat the illustrative chair did not embody the Kenna invention, and I am still of the opinion that it does not embody the whole of the Kenna invention, and am in doubt whether or not the chair with the supporting frame, operating in the same way as described in the Kenna patent but hinged at or near to the chair seat, would embrace the invention described in the Kenna patent and referred — in the second claim. There seem to me to be strong reasons for both views, viz., that it does embrace the invention because it has corresponding parts operating in substantially the same manner; that it does not embrace the invention because the arrangement and proportional parts is different and produces a substantially different result.

Cross-int. 62. Look at and examine the chair marked Complainants' Exhibit Defendants' Chair 1, and state whether or not, in your opinion, such chair would embrace the combination set forth in the claim given by you in answer to cross-int. 54, if the part
149 tagged F were removed entirely from the chair, giving your reasons in brief for the answer you may make.

Ans. In my opinion, it would embrace the combination, for the reason that it is a convertible chair, composed of a chair frame, a supporting frame, a supplemental frame, and a fastening for the supplemental frame, all having the limitations given by me in that answer. My reason for this view is that the chair frame has a recess that holds the bail in position, and is, in my opinion, a fastening for the bail, although in this case the fastening is a part of the chair frame and not a separate device applied to the chair frame.

Cross-int. 63. Look at Defendants' Exhibit Illustrative Chair and state whether or not such chair would embrace the combination referred to in the claim stated in your answer — cross-int. 54, if the spring catch which receives the upper end of the bail when the chair is used as a high chair were entirely removed from the chair.

Ans. If it were removed and no substitute provided it would not, in my judgment, infringe the claim. The question with relation to the fastening seems to me to depend upon whether or not there were adequate means to ensure the bail being brought into proper position to sustain the chair and being retained in this position where the chair is occupied. If such means were not provided and there was a fair possibility of the supplemental frame or bail slipping out of place so as to let the chair drop, it would not embody the invention as stated in the claim made by me; but if the part that receives the bail is properly constructed to hold the bail without danger of dropping under the movements and strains that occur in the use of the chair it would, in my opinion, embrace that combination.

(All after the word "claim," in the first sentence, objected to as not responsive.)

Cross-int. 64. Would the chair referred to in your last answer, with the spring catch which receives the upper part of the bail entirely removed, then contain, in your opinion, the invention described in the specification of the Kenna patent in suit and particularly specified in the 2d claim thereof?

Ans. Assuming that the lower hinges were the operative ones, I could not answer that question without seeing the chair tested in actual use. It would be mere guess-work on my part as to
150 whether or not the bail would be held with sufficient security, and consequently as to whether or not there were a substantial equivalent for the fastening for the bail—that is, for the yielding rest or support F of the 2d claim.

Stipulation.

(It is hereby stipulated that the cross-examination of this witness be suspended, and that the defendants shall be allowed to proceed, on Saturday, Oct. 30th, to take a second deposition of Mr. George I. Alden in relation to a certified duplicate of the Patent Office model and such other matters as may be thought necessary in view of the introduction of that certified duplicate. The complainant does not hereby waive objection to the certified duplicate nor to its introduction in evidence, but reserves the same right to object as if the certified duplicate had been put in evidence during the first direct examination of Mr. Alden. It is also agreed that Mr. Alden may be cross-examined by written interrogatories to be sent to defendants' counsel, and answer, as soon as may be, in writing, by the witness, in case of such cross-examination and redirect examination, shall be submitted to complainants' counsel and he may recross, if he sees fit, and so on.

But counsel will do all that each reasonably may to expedite the further examination of Prof. Alden, and as soon as his second deposition shall have been completed the cross-examination of Mr. Livermore shall be completed.)

(Adjourned.)

151 *Further Direct Testimony for Defendants.*

Second deposition of George I. Alden.

Direct examination by THOMAS H. DODGE, Esq., of counsel for defendants:

WORCESTER, *Oct.* 30, 1886.

Int. 1. You have already testified in this case, have you not?

Ans. I have.

Int. 2. It having appeared from the testimony submitted by the complainants that some doubt existed as to the particular manner in which the bail marked E in the Kenna patent in suit supports the chair seat when in an elevated position, inquiries were made of the commissioner, and it was found that Kenna deposited a model illustrating his invention described in said patent, which was before

the office at the time of granting the same, and the commissioner has furnished a certified duplicate (now offered in evidence and marked Defendants' Exhibit Duplicate Kenna Patent Office Model, W. A. C., sp'l ex'r.)

Look at and examine Defendants' Exhibit Duplicate Kenna Patent Office Model and compare the same with the Kenna patent in suit, Defendants' Exhibit Kenna Patented Chair, and Defendants' Exhibit Model of Kenna Patented Chair, and state what, if any, changes or explanations you desire to make in the testimony which you have already given in this case.

Ans. Since my testimony above referred to was given I have examined the Exhibit Duplicate Kenna Patent Office Model referred to in the question, and in view of this and the other exhibits mentioned would state that in the drawings of the said Kenna patent in suit the part marked F is shown only in figure 1, and from the view of it there given it appears to be a comparatively broad spring attached to the small rod *f*. The same part was so represented in Defendants' Exhibit Kenna Patented Chair and in Defendants' Exhibit Model of Patented Chair. In my testimony I so regarded it, and
152 considered it the element primarily referred to in the 2d claim of the Kenna patent in suit as the yielding rest or support F. Having now examined the certified duplicate of the Kenna model referred to, I find that the part corresponding to that marked F in figure 1 of the drawings of the said Kenna patent is not adapted to be a rest or support for the chair, and evidently was not intended for such a purpose; but the small rod *f*, under which the flattened top of the bail passes, exerts a yielding pressure upon the bail and constitutes the yielding rest or support referred to in the 2d claim of the said Kenna patent.

I also find that in the said duplicate model the bail, when supporting the chair, is prevented from rotating forward by resting against the slotted bars G of the patent, and also that the bail is so flattened upon the top and so inclines forward when supporting the chair that the yielding pressure of the small rod *f* tends to hold the bail from rotating backward when the chair is in its upright position.

If in the 2d claim of the said Kenna patent *f* were substituted for F the claim would seem consistent with the model, which leads me to think that such correction should be made, as I do not see how any one with the model before him could refer to the part corresponding to F in the drawing of figure 1 of the Kenna patent as a rest or support, but the small rod *f* does clearly constitute a yielding rest or support for the chair frame, and said 2d claim of the Kenna patent requires the *the* presence of such an element in the chair. I would, therefore, in view of these facts and considerations, modify my testimony previously given in this cause to that effect—that is, I would regard the rod *f* as constituting the yielding rest or support of the 2d claim of the said Kenna patent in suit.

Int. 3. It would appear, then, that the use of the letter "F" for the small letter "*f*" was a clerical error in the 2d claim of the Kenna patent. Please look at Defendants' Exhibit File of Kenna

Patent and the amendment made Oct. 30, 1879, and state if you there find a similar clerical error in a claim then presented. And, if yea, what is it?

Ans. Upon examination of said file-wrapper and contents I find that there is a similar error in referring to the slotted bars as "*g*" instead of "G" in a claim presented and numbered "4."

Int. 4. From examination of the Kenna patent in suit in connection with Defendants' Exhibit Duplicate Kenna Patent Office
153 Model, what have you to say as to whether or not the yielding rest or support referred to in the 2d claim of the Kenna patent being found or embraced in Complainants' Exhibit Defendants' Chair 1, Complainants' Exhibit Defendants' Chair 2, and Complainants' Exhibit Defendants' Chair 3, and Defendants' Exhibit Parker Chair, which last exhibit is the same as Complainants' Exhibit Defendants' Chair 3, with exception that the latter chair does not have the bail nor the table?

Ans. As I recall the chair exhibits named, I should say that none of them embrace the yielding rest or support which constitutes an element of the 2d claim of the Kenna patent in suit.

Int. 5. Look at Complainants' Exhibit Parker Patent, Complainants' Exhibit Chichester Patent No. 259,368, and Complainants' Exhibit Chichester Patent No. 260,843, and state whether or not you find the invention described in the Kenna patent and more particularly specified in the 2d claim thereof, as you now understand the Kenna patent, in either of the structures shown and described in said exhibits, giving briefly the reasons for the answer you may make.

Ans. I do not find in either of the chairs shown in the said patents the invention claimed in the Kenna patent and specifically referred to in the 2d claim thereof, for the reasons that in the structures shown in said patents I do not find anything which constitutes a yielding rest or support, as I understand that term, in the 2d claim of said Kenna patent. I believe further, as I have before testified and shown, that the state of the art at date of the filing of the application of the Kenna patent required the element or device specifically designated in the 2d claim of the Kenna patent as a yielding rest or support in order to give the claim validity. I further believe, as I have previously testified, that the combination of the 2d claim of said Kenna patent virtually involves the presence of the slotted bars G referred to in the said patent for the reasons I have before stated.

Defendants' counsel offers in evidence a chair marked Defendants' Exhibit Enlarged Duplicate Kenna Patent Office Model, W. A. C., sp'l ex'r.

Int. 6. To avoid reviewing in detail the different model and chair exhibits about which you testified in your former deposition, namely, that they did not contain "the yielding rest or support" called
154 for in the 2d claim of the Kenna patent in suit, state whether or not the fact brought out in your present examination as to what really constitutes the yielding rest or support in the Kenna

chair makes any change in your previous testimony relating to those exhibits, not already testified about thus far in this examination. Give the reasons for the answer you may make.

Ans. The facts brought out in my present deposition do not change the conclusions and opinions of my previous testimony in regard to any of the models or exhibits about which I then testified, for the reason that from the facts brought out in my present deposition in regard to what constitutes the yielding rest or support in the Kenna patent it does not appear that such yielding rest or support is found in any of the exhibits mentioned in the question.

Int. 7. Look at Defendants' Exhibit Enlarged Duplicate Kenna Patent Office Model and state whether you find it to be substantially an enlarged duplicate of Defendants' Exhibit Duplicate Kenna Patent Office Model, with the exception of the table which is left off in the chair.

Ans. I have examined the models referred to in the Int. and I find the enlarged model to be substantially an enlarged duplicate of the smaller model, with the exception noted in the question.

Int. 8. Will you prepare or have prepared sectional drawings of the two exhibits referred to in your last answer showing the position of the bail when swung up under the curved part of the spring catch, and also when in position under the yielding rest or support, the drawings of the Defendants' Exhibit Duplicate Kenna Patent Office Model to be marked Defendants' Exhibit Drawings Duplicate Kenna Patent Office Model and the other drawings to be marked Defendants' Exhibit Drawings Defendants' Exhibit Enlarged Duplicate Kenna Patent Office Model, W. A. C., sp'l ex'r.

Ans. I hereby produce drawings of the second model mentioned in the Int. These drawings show the bail E in two positions relatively to the rod *f*. In the first position, in the left-hand figure, the bail E is underneath the rod *f*, the latter resting thereon as is the case when the chair is in use. The dotted circle shows the normal position of the rod *f* before the bail E is passed under it. In the second or right-hand figure the bail E is shown just as it
155 begins to engage the rod *f*, but before passing under the latter. These sectional cuts show the parts substantially as they are found in the enlarged duplicate model, the only difference being that the parts marked *a* are on a fuller curve than is shown in the model, so that a portion of the wheel L hides a little of the outer edge of said parts *a*. This difference, however, is entirely unessential to the substantial similarity of the drawings with the model.

I also produce two sheets of drawings of the first model mentioned in the question. Sheet 1 is a sectional view showing the position of the bail E relatively to the rod *f* and other connected parts when the bail is just ready to be passed under the rod *f* to support the chair frame in its upright position. Sheet 2 is a sectional view of the same model, showing the bail E in position under the rod *f* for the support of the chair frame in its upright position.

(The drawings referred to are now introduced in evidence and marked as stated in the question.)

(Cross-examination waived.)

GEO. I. ALDEN.

Attest: WILLIAM A. COPELAND,
Special Examiner.

Additional Evidence for Complainants.

Deposition of J. P. Livermore resumed.

BOSTON, *Nov.* 18, 1886.

* * * * * * *

Redirect examination by J. E. MAYNADIER, Esq., of counsel for complainants:

Int. 66. Please examine Exhibit Enlarged Duplicate Kenna Patent Office Model and state wherein it differs from Exhibit Kenna Patented Chair and from the drawings of the Kenna patent in suit.

156 Ans. The main differences that I notice between it and the Exhibit Kenna Patented Chair are, first, that the spring catch that holds the bail in the Exhibit Enlarged Duplicate is of wire in place of sheet metal in Exhibit Kenna Patented Chair; second, that the spring catch in the enlarged duplicate does not act to hold the bail until it is moved forward beneath the cross-rod, while in the Exhibit Kenna Patented Chair the part of the spring catch that projects to the rear of the cross-rod is concaved or recessed underneath, so that it will hold the bail before the latter is forced forward beneath the cross-rod; next, that in the enlarged duplicate the bail is flattened on top, and in the natural, easy operation passes forward beneath the cross-rod, and when in this position the spring catch projects down behind it so as to oppose its removal from beneath the cross-rod, while in the Exhibit Kenna Patented Chair the bail is not so flattened and it requires considerable force to carry the bail forward beneath the cross-rod, and when in this position the spring catch does not project below the bail so as to oppose its backward movement from beneath the cross-rod; next, that in Exhibit Enlarged Duplicate the lower part of the slotted bars project inward so as to be struck by the bail when moving forward and prevent it from passing by to the front of the cross-rod, while in the Exhibit Kenna Patented Chair the slotted bars are not struck by the bail when moving forward so as to prevent it from passing to the front of the cross-rod, and the bail can be forced forward beyond the cross-rod. These differences are the only ones, so far as I can see, that in any way affect or modify the operation of the parts.

Comparing Defendants' Exhibit Enlarged Duplicate Kenna Patent Office Model with the drawings of the Kenna patent, I do not see any difference, except that the spring catch is made of wire in the enlarged duplicate and is represented as of sheet metal in the drawing, a difference that would not affect or modify the operation, although the catch shown in the patent would probably be somewhat stronger than that represented in the Exhibit Enlarged Duplicate.

The wire catch might be made as stout as a sheet-metal catch by using large enough wire.

Int. 67. As to the stop for preventing the bail from moving too far forward and the stop for preventing the chair frame from turning too far forward on the axis which connects it to the shortened
157 main frame, please state whether these two stops are essential or not and whether they are found or not in the various exhibits which in your opinion embody the Kenna invention.

Ans. In my opinion both these stops are essential and are found in all the exhibits which, in my opinion, embody the Kenna invention.

Int. 68. For greater clearness, and in order to sum the matter up in a single answer, and to thereby make clearer the meaning of many of your answers to cross-interrogatories relating to details, please state again what you believe to be the essential elements of a chair embodying the Kenna invention as you understand it.

Ans. First, the chair frame having legs rigidly connected with the seat of about the length required for a low chair; second, the shortened supporting frame of about the height required to be added to the low chair to make a high chair, the said supporting frame being hinged to the legs of the chair frame and turning quarter around to convert the chair from high to low or the opposite; third, a supplemental frame to be interposed between the chair frame and supporting frame; and, fourth, a fastening to hold the supplemental frame in position between the chair frame and supporting frame to support the chair frame as a high chair.

* * * * * * *

158 *Second Deposition of Asher B. Stevens.*

Direct examination by J. E. MAYNADIER, Esq., of counsel for complainants:

BOSTON, *Nov.* 18, 1886.

Int. 1. What is your name and have you before testified in this case?

Ans. Asher B. Stevens; I have.

Int. 2. When did you first see the Patent Office model on file in the U. S. Patent Office, of letters patent to Kenna, Exhibit Kenna Patent in suit?

159 Ans. It was within three or four days following the date of my previous testimony in this case—between the 26th and the last of August.

Int. 3. When did you last see that Patent Office model on file in the U. S. Patent Office?

Ans. I saw it Monday, Nov. 1st, 1886.

Int. 4. What change, if any, had been made in it?

Ans. A small spring catch had been put upon it.

Int. 5. When you first saw it in the latter part of August, 1886, what signs, if any, were visible as to the attachment of the spring catch to the cross-rod of the lower rear corner of the chair frame?

Ans. The solder remained upon the cross-rod upon its upper and

inward portions, but the catch itself was broken off. The catch I did not observe, and have since been informed that it was lost.

(That portion of the answer relating to information from others objected to as hearsay.)

I might further remark that the solder covered the space of between a quarter and a half inch in width on the rod when I first saw it.

Int. 6. How did the space covered by solder compare with the space covered by solder in the Defendants' Exhibit Duplicate Kenna Patent Office Model?

Ans. There was considerable more of it and it was thicker on the rod than in the Exhibit Duplicate Kenna Patent Office Model, and it extended around farther on the inside of the rod.

Int. 7. Did you have any talk with the official who showed you the model on the 1st of November as to the addition of the spring catch to the model? If so, state the substance of what he said.

(Question objected to so far as it enquires of the witness what any other person said, such testimony being hearsay and not admissible.)

Ans. I did; and he, in answer to my questions, said that they were not able to find the spring that was originally upon the model, and he had had a spring put upon it as well as this Exhibit Duplicate Kenna Patent Office Model, which would as nearly as possible, in his judgment, perform the office which the spring was intended for. I told him that this was not a representation of the spring shown in the drawings of the Kenna patent, in that it was
160 much more slender and narrower. He thought I was mistaken, and sent for a copy of the drawings, and upon inspection of them found that I was correct so far as the drawings illustrated the spring; but he said that he found a little place filed in the rod of the original model which had led him to think that the spring was of a slenderer construction than was shown in the drawings. That is about all with reference to the spring catch.

(The latter portion of the answer relating to what others said objected to as hearsay.)

* * * * * * *

161 *Stipulation.*

It is hereby agreed by and between the parties to the above-named cause that Mr. R. A. Hitchcock, of Chicago, Illinois, would testify on behalf of the defendants in the above-named cause as follows: That the first Kenna chairs were not made at the penitentiary at Michigan City by Ford Johnson & Co. until the fall of 1880, and that they did not have slotted bars, and the first shipment of Kenna chairs to Barnes & Co., of New York city, was September 13, 1881, as their books will show.

Hitchcock will further testify that the first sale of Kenna chairs appears by their books to have been to Charles Shervrick early in December, 1879, and such chairs did not have slotted bars; that the

first Kenna chairs they had made was about September 1st, 1879, by R. W. Bates & Co., of Chicago, and these chairs did not have slotted bars, and the first chairs that were made by Kappers & Eggers was in the fall of 1879, the first bill being dated November 18, 1879, and they did not have slotted bars, and that the chairs made for Ford, Johnson & Co. at South Bend, Indiana, were not manufactured until the fall of 1881.

Mr. Hitchcock will further testify that the model used for the patent was made in the summer of 1879, and that the books show that it was paid for August 15, 1879.

It is also agreed by and between the parties to the above-named cause that the said R. A. Hitchcock would testify in the above-named cause on behalf of the complainants as follows:

My impression is that when I first saw the Kenna chairs was in the year 1878, but it possibly may have been in the year 1877. I have no data or memorandum to guide me in this matter and rely on my memory. The first chair I saw was made with slotted bars. I do not know now whether or not Mr. Kenna had a model of the chair made before the model was made that was used with application for patent. I also testify that I believe that Mr. Kenna
162 did have a few chairs made and sold on his own account before I took an interest with him in the chair. I do not know that the model made to send with application was the first model Mr. Kenna had made of the chair.

It is also agreed by and between the parties to the above-named cause that Mr. Otto C. Hoffman, of Chicago, Illinois, would testify in the above-named cause on behalf of the complainants as follows:

I am a resident of Chicago, State of Illinois; I am twenty-six years of age, and am engaged in business as a model-maker, and have been engaged in such business, making models of various kinds of machinery or mechanical appliances, for about twelve years past. I am acquainted with Joseph W. Kenna, of Chicago, Illinois, and have recently made two brass models for said Kenna of children's convertible chairs and carriages, one of which models was constructed after the plans and specifications of letters patent No. 224,923, granted to said Kenna for child's chair and carriage, and bearing date February 24th, A. D. 1880. At the time of making said brass models for said Kenna I understood from him that the same were to be used in some court case which was then pending, and he was anxious to have the work completed as speedily as posibly in order to take the models with him for the purpose of testifying in such case.

I first became acquainted with said Kenna in the spring or summer of 1878; he then brought me a rough model of a convertible child's chair, from which model, under said Kenna's instructions, I then made a model for him, which was completed by me some time in the summer of the year 1878, although I am unable to fix the exact day or month. Such model then made by me for said Kenna was a child's chair and carriage in all material and essential particulars the same, in the organization and construction of the parts thereof, as shown in the drawings and described in the letters patent

No. 224,923, granted to said Kenna as aforesaid. I worked for Mr. Peter Seyl at that time in Chicago, Illinois, viz., 1878. He had a front room for a shop in the year 1877, but moved from that room into a rear room in the same building in the spring of 1878, and it was after said Seyl had so moved into said rear room that I made the model for said Kenna as aforesaid, and which was the first work I ever done for said Kenna.

163 The above statements may be taken as depositions duly taken and filed in the cause.

THOS. H. DODGE,
Counsel for Defendants.
J. E. MAYNADIER,
For Complainants.

November 19, 1886.

164 The following is the opinion of the circuit court in accordance with which the decree for complainants was entered December 3, 1887:

Circuit Court of the United States, District of Massachusetts. In Equity.

DANIEL L. THOMPSON *et al.*
v.
PHILANDER DERBY *et al.*
} No. 2273.

Opinion of the Court (*December* 3, 1887).

COLT, *J.*:

This is a suit for an injunction, account, and damages, based upon letters patent No. 224,293, dated February 24, 1880, granted to Joseph W. Kenna for improvements in a combined child's chair and carriage. The specification says:

"My invention relates to an article of furniture which, by simple adjustment of the several parts, may be converted from a nursery chair to a child's carriage, and *vice versa*, so that it may be used for either a child's high chair or a carriage, as may be desired. The invention consists in the manner of connecting the chair to its supporting frame and supporting it therein, and also special devices and combinations of devices."

The first claim of the patent covers some of the special devices described in the specification. The second claim is more general in its character, and is relied upon in this suit. It reads as follows:

"The frame A in combination with bail E, chair frame B, pivoted at its lower front corners to the frame A, and the yielding rest or support F, substantially as described."

165 F is also termed in the specification a spring catch, and it is manifest that this is a more correct term than yielding rest. It is used to hold the bail E in position when the chair is used as a high chair. The Kenna chair is an improvement on what is called the Pearl chair, in that the supporting frame is hinged to

the front legs of the chair instead of being hinged directly to the chair seat. The plaintiffs contend that three chairs made and sold by the defendants infringe the second claim of the Kenna patent. The first of these alleged infringing chairs is found described in the Chichester patent No. 259,368, dated June 13, 1882; the second in the Chichester patent 260,843, dated July 11, 1882, and the third in the Parker patent No. 317,668, dated May 12, 1885.

With respect to the Kenna patent, it is urged that it must receive a narrow construction in view of what took place in the Patent Office upon the application for the patent and in view of the prior state of the art. The office rejected the broad claim made by Kenna to the combination of the supporting frame, chair frame pivoted thereon, and bail on the ground that such combination was shown in the prior Pearl chair, and Kenna acquiesced in the decision of the examiner, and directed the claim to be erased from his application; but as to the claim now sued upon, it is found in the original application, and it was allowed, so far as appears, without question, and I am of opinion that it is a valid claim for a combination. Each of the elements may be old, but they were never combined together before, and they produced a new and improved result. Many prior patents for combination chairs have been introduced in evidence, but nowhere do we find described the Kenna chair or all the features of the Kenna chair covered by the second claim of the patent. Undoubtedly the Caulier patent and the Patten patent and other prior patents, together with the Pearl chair, tend to
166 limit the scope of the Kenna invention, but I do not think any of them are anticipations of that invention.

The question of infringement remains. As to defendants' chairs made under the two Chichester patents, it seems to me clear that they use all the elements described in the second claim of the Kenna patent. In the Chichester chairs there are found the supporting frame A, the bail E, the chair frame B, pivoted at its lower front corners to the frame A, and the spring catch or support F, or what may fairly be considered their equivalents.

With respect to the Parker chair I find no infringement. There is not found in the Parker chair either the bail or spring catch described in the Kenna patent. The bail is not used for the purpose of supporting the chair, but only for the purpose of pushing when the chair is converted into a carriage, nor is the catch of the Kenna patent present in the Parker chair.

Upon the evidence the plaintiffs contend that the Kenna invention antidates the Pearl chair, but I find the contrary to be the fact. The effort of the defendants to show that L. A. Chichester invented the Kenna chair is not sustained by sufficient proof. Nor can I agree with defendants that the special devices, such as the slotted bars which are made the subject-matter of the first claim of the Kenna patent, must by implication be incorporated into the second claim. My conclusion is that defendants' chairs made under the Chichester patents infringe the Kenna patent, and that defendants' chairs made under the Parker patent do not infringe, and a decree may be drawn accordingly.

Decree for complainants.

167 The following is the opinion of the court in accordance with which defendants' exceptions to master's report were overruled:

Circuit Court of the United States, District of Massachusetts. In Equity.

DANIEL L. THOMPSON *et al.*
v.
PHILANDER DERBY *et al.* } No. 2273.

Opinion of the Court, Jan. 18, 1889.

COLT, *J.:*

The only question raised on the exceptions to the master's report is whether there is found in Defendants' Exhibits A and B the yielding rest or support F of the Kenna patent or its equivalent. In my opinion the spring pressure which holds the bail securely under the chair seat in Exhibits A and B is the equivalent of the yielding rest or support shown in the Kenna chair. It follows that the master was right in his findings and that the exceptions should be overruled.

Exceptions overruled.

168 The following is the defendants' appeal to the Supreme Court of the United States:

Defendants' Appeal to the Supreme Court. (*Filed in Circuit Court March* 30, 1889.)

To the honorable the Supreme Court of the United States:

The appeal of the above-named defendants and appellants respectfully shows—

That the above-named complainants and appellees filed their bill of complaint in the circuit court of the United States for the district of Massachusetts against the above-named defendants and appellants, reciting the grant and issue of letters patent of the United States No. 224,923, granted to Joseph W. Kenna and Reuben A. Hitchcock on February 24, 1880, for an alleged new and original invention in child's chairs and carriages, and charging that the said defendants and appellants had infringed said letters patent, and praying for a decree, an injunction, and account.

That these defendants and appellants appeared and filed an answer, denying the allegations of the said bill of complaint and that they infringed said letters patent or intended so to do.

That thereafter this cause was heard on the pleadings and proofs taken therein by his honor Le Baron B. Colt, circuit judge, who afterwards, on or about the third day of December, 1887, filed an opinion that said defendants and appellants had infringed said letters patent and sustained the validity thereof and ordered that a decree for an injunction and account be entered in favor of complainants and appellees with costs.

That in accordance therewith an interlocutory decree was
169 entered ordering an injunction to issue restraining said defendants and appellants from further infringing said letters patent numbered 224,923 and referring this cause to a master to take an account of the gains, profits, and advantages derived by the said defendants and appellants from and through said infringements and to assess the damages suffered by complainants by reason of said infringement with costs.

That the master to whom this cause was so referred, having taken proofs and heard the proofs on the matters referred to, made his report thereon; to which exceptions were duly filed by said defendants and appellants; which exceptions were, on or about the 18th day of January, overruled by the court; that thereupon complainants' costs were taxed by the clerk of said circuit court at the sum of $1,061.26; which taxation was, upon appeal to the circuit court thereof, sustained; that thereupon defendants moved in open court to disallow the complainants such costs and expenses as had been incurred by them in their attempt to prove infringement by that exhibit which the court had found not to infringe complainants' patent, but said motion was denied; that thereafter and on or about the eighth day of February, 1889, a final decree was entered in this cause confirming the report of the master, and wherein it was ordered that the complainants and appellees herein do recover from the said defendants and appellants the sum of sixteen hundred and forty-two dollars and twenty-six cents, and that the complainants and appellees have due execution and proper process for the collection thereof.

Wherefore these appellants appeal from the whole of the decree of the said circuit court of the United States, and respectfully
170 pray that the decree of the said circuit court of the United States and the pleadings, proofs, exhibits, and proceedings in said cause may be forthwith sent to the Supreme Court of the United States, and that said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed and a decree made dismissing said bill of complaint with costs, or such other decree as to the said Supreme Court shall seem just.

ARTHUR v. BRIESEN,
Counsel for Defendants and Appellants.

171 *Clerk's Certificate to Volume I.*

UNITED STATES OF AMERICA, } ss:
Massachusetts District, }

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is true copy of the record of the circuit court, the evidence, not including exhibits, the opinions of the circuit court, and the proceedings on appeal in the cause in equity entitled—

DANIEL L. THOMPSON *et al.*, Complainants,
v.
PHILANDER DERBY *et al.*, Defendants. } No. 2273.

in said circuit court determined.

And I further certify that this volume, entitled "Transcript of record, volume I, record evidence, not including exhibits, opinions of the court, proceedings on appeal," and an accompanying volume, having my certificate of even date herewith thereto annexed, entitled "Transcript of record, volume II, exhibits in print," together contain a true copy of the record and of all proceedings, including the opinions of the circuit court and defendants' appeal to the supreme court, in said above-entitled cause, in said circuit court determined.

Seal of the Circuit Court, Massachusetts.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the one hundred and thirteenth.

JOHN G. STETSON, *Clerk.*

172 *Bond on Appeal.*

Supreme Court of the United States.

PHILANDER DERBY, ARTHUR P. DERBY, GEORGE HODGMAN, and GEORGE W. CANN, Appellants,
v.
DANIEL L. THOMPSON, CHARLES A. PERLEY, and GILMAN WAITE, Appellees.

Know all men by these presents that we, Philander Derby, Arthur P. Derby, and George Hodgman, of Gardner, Massachusetts, and George W. Cann, of New York, New York, and Charles H. Lang, Jr., of Melrose, Massachusetts, are held and firmly bound unto Daniel L. Thompson, Charles A. Perley, and Gilman Waite in the sum of $3,284.52, to be paid to the said Daniel L. Thompson, Charles A. Perley, and Gilman Waite, their executors or administrators; for which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, and assigns firmly by these presents.

Sealed with our seals, dated this 28th day of March, 1889.

Whereas the above-named Philander Derby, Arthur P. Derby, George Hodgman and George W. Cann have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of
173 the United States for the district of Massachusetts in the first circuit:

Now, therefore, the condition of this obligation is such that if the above-named Philander Derby, Arthur P. Derby, George Hodgman and George W. Cann shall prosecute their said appeal to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

PHILANDER DERBY. [SEAL.]
ARTHUR P. DERBY. [SEAL.]
GEORGE HODGMAN. [SEAL.]
GEO. W. CANN. [SEAL.]
C. H. LANG, JR. [SEAL.]

Sealed and delivered in the presence of—
HARRY M. TURK,
as to G. W. Cann.
THATCHER B. DUNN,
to P. D., A. P. D., & G. H.
ARCHIBALD M. HOWE,
C. H. L., Jr.

DISTRICT OF MASSACHUSETTS, } ss:
State of Massachusetts, County of Worcester, }

On this 29 day of March, 1889, before me personally appeared Philander Derby, Arthur P. Derby, and George Hodgman, to me known and known to me to be three of the individuals described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same as their free act and deed for the uses and purposes therein mentioned.

[SEAL.] THATCHER B. DUNN,
Notary Public.

174 SOUTHERN DISTRICT OF NEW YORK, } ss:
State of New York, City and County of New York, }

On this 28th day of March, 1889, before me personally appeared George W. Cann, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed for the uses and purposes therein mentioned.

[SEAL.] HARRY M. TURK,
Notary Public, N. Y. County.

DISTRICT OF MASSACHUSETTS, } ss:
State of Massachusetts, County of Suffolk, }

On this 30th day of March, 1889, before me personally appeared Charles H. Lang, Jr., to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed for the uses and purposes therein mentioned.

[SEAL.] ARCHIBALD M. HOWE,
Notary Public.

DISTRICT OF MASSACHUSETTS, } ss:
State of Massachusetts, County of Suffolk, }

Charles H. Lang, Jr., the surety in the foregoing obligation named, being duly sworn, deposes and says that he is a resident of the State of Massachusetts and a householder therein and is
175 worth the sum of $6,569.04 over all his just debts and liabilities and exclusive of property exempt by law from levy and sale under execution.

Subscribed and sworn to before me this 30th day of March, 1889.

[SEAL.] ARCHIBALD M. HOWE,
Notary Public.

Bond approved.

LE BARON B. COLT,
Circuit Judge.

176–184 *Citation.*

THE UNITED STATES OF AMERICA:

To Daniel L. Thompson, Charles A. Perley, and Gilman Waite, all of Baldwinsville, in the State of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal claimed and allowed by the circuit court of the United States for the district of Massachusetts in a cause in equity wherein Philander Derby, Arthur P. Derby, George Hodgman, and George W. Cann, all of Gardner, in said State, are defendants and appellants and you are complainants, to show cause, if any there be, why the decree rendered against the said defendants should not be reversed and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Le Baron B. Colt, circuit judge of the United States for the first judicial circuit, this thirtieth day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

LE BARON B. COLT,
U. S. Circuit Judge.

Service of the foregoing citation is accepted.

J. E. MAYNADIER,
For Complainants.

185 DEFENDANTS' EXHIBIT FILE OF KENNA PATENT. W. A. C., Sp'l Ex'r.

(Put in evidence, page 43.)

To the Commissioner of Patents:

Your petitioner, a resident of Chicago, in the county of Cook and State of Illinois, prays that letters patent may be granted to him for the invention set forth in the annexed specification, and he hereby

appoints L. L. Coburn and J. M. Thacher, composing the firm of Coburn and Thacher, of Ashland block, Chicago, Illinois, his attorneys, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

JOSEPH W. KENNA.

To all whom it may concern:

Be it known that I, Joseph W. Kenna, of Chicago, in the county of Cook and State of Illinois, have invented a new and useful improvement in combined child's chair and carriage, which is fully described in the following specification, reference being had to the accompanying drawings in which—

Figure 1 represents a rear elevation of my improved chair and carriage with the chair elevated.

Fig. 2 a side elevation of the same, the chair being shown in dotted lines tilted down for conversion into a carriage.

Fig. 3 a side elevation of the same when adjusted for use as a carriage.

My invention relates to an article of furniture which by simple adjustment of the several parts may be converted from a nursery chair to a child's carriage and *vice versa*, so that it may be used for either a child's high chair or a carriage, as may be desired.

186 The invention consists in the manner of connecting the chair to its supporting frame and supporting it therein, and also in special devices and combinations of devices, all of which will be hereinafter more fully described and pointed out definitely in the claims.

In the drawings A represents the supporting frame, which in Figs. 1 and 2 is shown in an upright position adapted to support the chair when it is to be used as a child's high chair. The rear standards *a* of this frame are bent forward as they are extended upward until they reach the front standards *a*, to which they are joined at their upper ends, as shown in Fig. 2 of the drawings.

The chair frame B is of any ordinary construction, being shown in the drawings as substantially rectangular in form, the base frame *b*, on which the seat b^1 is supported, being nearly square.

A foot rest, C, is attached to the front of the base frame, the side bars of which may be extended slightly for this purpose.

This chair frame is attached to the upper front portion of the frame A by a hinge joint located at the front part of the base frame *b* of the chair. In this instance two parts are connected by a pivot rod, D, which passes through the standards a^1 near their upper ends and the side bars of the base frame *b* near their front ends, so that the chair is pivoted to its supporting frame at its lower front corner.

A bale, E, is hinged to the lower rear corner of the frame A and swings forward under a spring catch, F, on a rod, *f*, at the lower rear corner of the chair frame to support the chair at the rear when in an elevated position, as shown in Fig. 1 of the drawings.

Bars G are pivoted at their lower ends to the rear standards *a*, and

are provided with longitudinal slots *g*, through which pins H at the rear lower corners of the chair frame are inserted.

It is evident that these slotted bars will hold the chair from turning up from its proper position, and, in connection with the supporting bale, will hold the chair securely in the elevated position shown in Figs. 1 and 2 of the drawings, when it is adapted for ordinary use as a child's high chair.

In order to convert the chair into a carriage the supporting bail is swung backward, when it is evident that the chair frame
187 will turn back on its pivot into the position shown in dotted lines in Fig. 2 of the drawings, the pins H moving along in the slots of the bars G, which swing downward and inward as the chair turns back until the pins reach the lower ends of the slots.

In the upper ends of these bars notches *g* are cut, which, when the chair is turned down, engage with pins I on the inside of the front standards a^1, thereby stopping the movement of the chair. At the same time a spring, J, attached to one of these bars near the middle thereof engages with a pin, K, at one end of the chair seat, thereby fastening the chair in this position.

The frame is then tilted forward on the front supports a^1 into the position shown in Fig. 3 of the drawings, when it rests upon wheels L, on the bottom of the chair frame, which is now in an upright position again.

By this adjustment it will be seen that the chair is converted into a wheel carriage, on which the child may be moved from place to place or thrown forward in front, as shown in dotted lines in the same figure, where it will be out of the way, and in which position it should always be placed for packing.

A shelf or table, M, is pivoted to the front ends of the chair arms, as shown in Figs. 2 and 3 of the drawings, and may therefore be tilted forward and downward whenever desired, but is held in a horizontal position by suitable springs, *m*, attached to the inner corners of the table and arranged to embrace the chair arms. The carriage is of course readily convertable into a chair again by reversing the movements above described.

In making these changes it is not necessary to remove the child from the chair, for instead of tilting the chair back, as shown in Fig. 2 of the drawings, it may be held in an upright position and the frame A tilted forward on its front standards until it assumes the position shown in Fig. 3 of the drawings, and in changing from the latter position to a chair the supporting frame may be tilted upward and backward into the position shown in Fig. 2 of the drawings, while at the same time the chair is held in an upright position by the attendant.

The spring catch J engages with the pin K automatically, so that as soon as the chair is brought into the position required to convert it into a carriage it is stopped at once and fastened in position.

188 The adjustment necessary to convert the chair into a carriage, and *vice versa*, *are* very simple and easily effected. The construction of the complete article of furniture is very cheap and

simple, so that I obtain a combined chair and carriage cheap, simple, and durable.

Some of the *decived* herein described and shown may be changed or others substituted therefor; hence I do not limit myself in all particulars to the mechanical devices above described.

It is evident also that the pivotal connection between the chair and its supporting frame might be made at the rear of the chair instead of in front, the lower frame being changed to suit the circumstances; but the adjustment would not be so convenient, and the construction of the lower frame, A, adapting it to either chair or carriage, would not be so simple.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is:

Cancelled Oct. 31, '79. 1. In a combined chair and carriage, an upright supporting frame, A, in combination with a chair frame hinged thereto at its lower front or rear corners, whereby the two parts may be adjusted in relation to each other, substantially as and for the purpose set forth.

2. The supporting frame A, in combination with the chair frame, hinged thereto at its lower front corners, and the movable support E, substantially as described.

3. The supporting frame A, composed of the front standards, a^1, and the rear standards, a, bent as described and joined at their upper ends to the front standards with suitable braces connecting the two, whereby the frame is adapted to adjustment for chair or carriage, substantially as shown and described.

---

1. [4.]* The frame A, in combination with the chair frame B, pivoted thereto as described; the swinging slotted bars G, and pins H on the chair, substantially as described.

Cancelled Oct. 31, '79. 5. The chair frame B, in combination with the spring catch J, and tilting frame A, substantially as described.

6. The chair B, provided with wheels L, in combination 189 with the tilting frame A, pivoted at its upper end to one edge of the chair frame and constructed and arranged so that where the tilting frame is turned down into a horizontal position the chair wheels will project below the latter, so that the structure will rest thereon, substantially as described.

---

2. [7.]* The frame A, in combination with the bail E, chair frame B, pivoted at its lower front corners to the frame A, and the yielding rest or support F, substantially as described.

Words and sentences enclosed between rules erased in copy.
* Figures enclosed in brackets erased in copy.

Substitute A, Oct. 31, '79.

8. The chair, in combination with the table M, pivoted to its arms and provided with springs *m* for holding it in a horizontal position, substantially as described.

JOSEPH W. KENNA.

Witnesses:
JNO. C. MACGREGOR.
W. C. CORLIES.

STATE OF ILLINOIS, } ss:
County of Cook, }

Joseph W. Kenna, the above-named petitioner, being duly sworn, deposes and says that he verily believes himself to be the original and first inventor of the improvement in combined child's chair and carriage described and claimed in the foregoing specification; that he does not know and does not believe that the same was ever before known or used, and that he is a citizen of the United States.

JOSEPH W. KENNA.

Subscribed and sworn to before me this 23d day of July, A. D. 1879.

JNO. C. MACGREGOR,
[L. S.] *Notary Public.*

190 Room No. 105.

Copied Sept. 24, 1879. F. R. L.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Sept. 23rd*, 1879.

Joseph W. Kenna,
Care Coburn & Thacher,
Ashland block,
Chicago, Ills.

9282.
Child's chair & carriage.
July 28, 1879.

The 1st claim is bad in form, being alternative in expression, and could not be allowed for the further reason that the frame A is not shown pivoted at rear corner of the chair frame.

The 5th claim is incomplete.

The claims are met as follows, viz., the 1st and 2nd in patents to F. Caulier, 202,788, Apr. 23, 1878, and Harris & Childs, 137,610, Apr. 8, 1873; the 3rd in that to D. Gleason, 215,601, May 20, 1879; the 5th in Caulier, hereinbefore cited; the 6th in that to F. Chichester, 217,341, July 8, 1879, and the 8th in that to J. F. Downing, 138,620, May 6, 1873 (all the references in class "nursery chairs").

The application is rejected.

L. M. E. COOKE, *Examiner.*

S. BRASHEARS,
Ass't Exam'r.

Words and sentences enclosed between rules erased in copy.

Hon. Com'r of Patents.

SIR: In the matter of the application of Joseph W. Kenna for patent for children's chair and carriage, filed July 28, 1879, we hereby appoint Ellis Spear, Esq., of Washington, D. C., our associate, with full authority to act for us in the prosecution of said application.

Respectfully, COBURN & THACHER,
Att'ys for Applicant.

Washington, D. C., Oct. 25, 1879.

191 To the Com'r of Patents.

SIR: In the matter of my application for patent for children's chair & carriage, filed July 28, 1879—

Erase claims 1, 2, 3, 5, 6, & 8th and renumber claims 4 & 7 "1" and "2" and insert as additional claims:

Cancelled Dec. 17,'79. A. 3d. The combination of the supporting frame A, composed of front standards, a^1, and A rear standards, a, the chair frame B, pivoted thereto at its lower front corner, and the curved supporting bale, pivoted at the lower end of the said standards, a, substantially as described and shown.

Cancelled Dec. 3,'79. 4th. The combination, with the slotted bars [g]* G A and spring catch J, of the pin K, on the tilting chair frame, the parts being automatically connected when said tilting frame is swung down, substantially as and for the purposes set forth.

Very respectfully, JOSEPH W. KENNA,
By ELLIS SPEAR, *Att'y.*

Washington, D. C., Oct. 30, 1879.

Room No. 105.

C, Dec. 1. S. M. E.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Nov. 29th*, 1879.

Joseph W. Kenna,
Care Ellis Spear,
Present.

9282.
Child's chair & carriage.
July 28, 1879.

Examined as amended. The 4th claim is to a simple latch device as shown in the patents to Caulier & Downing, as before cited, and must therefore be rejected.

L. M. E. COOKE, *Examiner.*

S. BRASHEARS,
Ass't Exam'r.

Words and sentences enclosed between rules erased in copy.
* Letter enclosed in brackets erased in copy.

192 To the Com'r of Patents.

SIR: In the matter of my application for patent for children's chair & carriage, filed July 28th, 1879, I amend by erasing the 4th claim.

Respectfully submitted.

JOSEPH W. KENNA,
By ELLIS SPEAR, *Att'y.*

Washington, D. C., Dec. 3d, 1879.

Room No. 105.

C, Dec. 13. S. M. E.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Dec. 12th*, 1879.

Joseph W. Kenna,
Care Ellis Spear,
Present.

#9282.
Child's chair & carriage.
July 28, 1879.

Since last official action and the amendment of the 3rd inst. it has been discovered that the 3rd claim is met in the chair shown in Heywood Bros. catalogue known as the "Pearl" and numbered 292. Said claim must therefore be rejected.

L. M. E. COOKE, *Examiner.*

S. BRASHEARS,
Ass't Exam'r.

193 To the Com'r of Patents.

SIR: I hereby amend my application for patent for children's chair & carriage, filed July 28, 1879, by erasing the 3rd claim.

Respectfully submitted.

JOSEPH W. KENNA,
By ELLIS SPEAR, *Att'y.*

Washington, D. C., Dec. 17, 1879.

Issue division. (2-024.) Serial No. —.

All communications should be addressed to "The Commissioner of Patents, Washington, D. C."

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
WASHINGTON, D. C., *Dec.* 26, 1879.

Jso. W. Kenna, ass'or, care Ellis Spear, present.

SIR: Your application for a patent for an improvement in children's chairs and carriages, filed July 28, 1879, has been examined and allowed.

The final fee, twenty dollars, must be paid, and the letters patent bear date as of a day not later than six months from the time of this present notice of allowance.

If the final fee is not paid within that period the patent will be withheld, and your only relief will be by a renewal of the application, with additional fees, under the provisions of section 4897, Revised Statutes. The office aims to deliver patents upon the day of their date and on which their term begins to run; but to do this properly applicants will be expected to pay their final fees
194 at least twenty days prior to the conclusion of the six months allowed them by law. The printing, photo-lithographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will consume the intervening time, and such work will not be done until after payment of the necessary fees.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor and title of invention as above given, date of allowance (which is the date of this circular), date of filing, and, if assigned, the names of the assignees.

If you desire to have the patent issue to assignees, an assignment containing a request to that effect, together with the fee for recording the same, must be filed in this office on or before the date of payment of final fee.

Additional copies of specifications and drawings will be charged for at the following rates: Single copies, uncertified, 25 cents; twenty copies or more, 10 cents each. The money should accompany the order.

Very respectfully,

H. E. PAINE,
Commissioner of Patents.

Written across the face of the above circular is as follows:

In remitting the final fee give the serial number at the head of this notice.

In the margin:

The within title is that given by the examiner in charge as most appropriate to your invention. Should you desire a change in the same satisfactory reasons must be given therefor on or before the payment of the final fee.

195 *Memorandum of Fee Paid at U. S. Patent Office.*

Inventor,
Jos. W. Kenna.
Patent to be issued to
Joseph W. Kenna
and
Reuben A. Hitchcock.
Name of invention as allowed,
Children's chairs and carriages.
Date of payment,
February 2nd, 1880.
Fee,
$20.00.
Solicitors,
Coburn and Thacher.
Date of circular of allowance,
December 26th, 1879.

Send patent to
Coburn & Thacher,
52 Ashland block,
Chicago, Ills.

196 1879. 9282.
Div. 8.

No. 224,923.

Joseph W. Kenna, ass'or of *me*-half his right to Reuben A. Hitchcock, of same place,
Of Chicago,
County of Cook,
State of Illinois.
Combined child's chair and carriage.
Rec'd, July 28, 1879.
Petition, " " "
Affidavit, " " "
Specification, " " "
Drawing, " " "
Model, " " "
Cert. dep., $15, " " "
Cash, —.
Add'l fee, cert., $20, Feb'y 5, 1880.
" " cash.
Examined, Dec. 22, 1879. L. M. E. Cooke.
Issue, Dec. 24, '79. Arthur W. Crossley.
Patented Feb'y 24, 1880.
3. Circular, Dec. 26, 1879.
Coburn & Thacher, "Ashland block," Chicago, Ill.
Ellis Spear, asso., present.

1879.

Contents.

Application papers.
Letter, Sept. 23, 1879.
Asso. power att'y, Oct. 27, 1879.
Amend't (A), Oct. 31, 1879.
Letter, 4, Nov. 29, 1879.
Amendment, Dec. 3, 1879.
Letter, 3, Dec. 12, 1879.
Amendment, Dec. 17, 1879.

197 Complainants' Exhibit Kenna Patent.

In Suit.

W. A. C., Sp'l Ex'r.

U. S. Patent No. 224,923.

February 24, 1880.

Joseph W. Kenna

assignor to

Reuben A. Hitchcock.

Child's Chair and Carriage.

Send patent to
Coburn & Thacher,
52 Ashland block,
Chicago, Ills.

196 1879. 9282.
Div. 8.

No. 224,923.

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Specification, " " "
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Cert. dep., $15, " " "
Cash, —.
Add'l fee, cert., $20, Feb'y 5, 1880.
" " cash.
Examined, Dec. 22, 1879. L. M. E. Cooke.
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Ellis Spear, asso., present.

1879.

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Amend't (A), Oct. 31, 1879.
Letter, 4, Nov. 29, 1879.
Amendment, Dec. 3, 1879.
Letter, 3, Dec. 12, 1879.
Amendment, Dec. 17, 1879.

197 Complainants' Exhibit Kenna Patent.

In Suit.

W. A. C., Sp'l Ex'r.

U. S. Patent No. 224,923.

February 24, 1880.

Joseph W. Kenna

assignor to

Reuben A. Hitchcock.

Child's Chair and Carriage.

J. W. KENNA.

Child's Chair and Carriage.

No. 224,923. Patented Feb. 24, 1880.

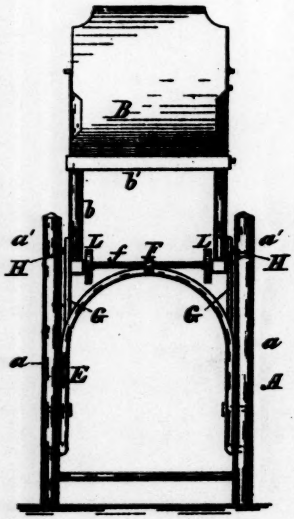


Fig 1

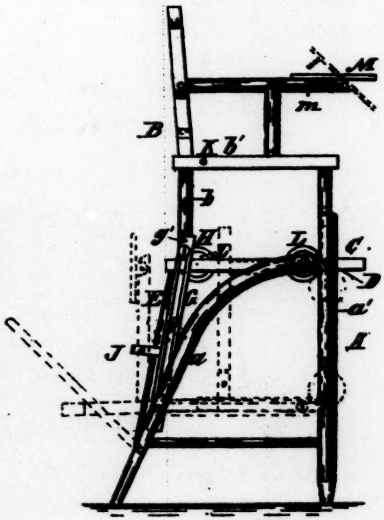


Fig 2

No. 362. Worby et al. vs. Thompson et al. } p. 198

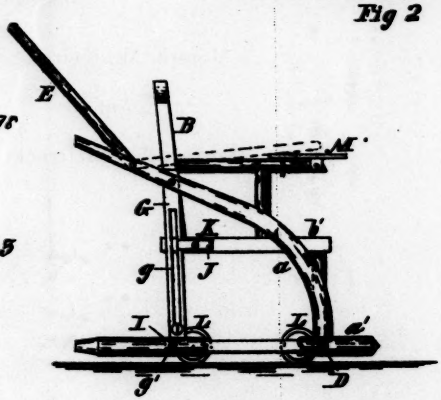


Fig 3

Witnesses
W. C. Corliss
Jno. C. MacGregor,

Inventor
Joseph W. Kenna
By Cabanne & Thacher
Attorneys

199 UNITED STATES PATENT OFFICE.

JOSEPH W. KENNA, of Chicago, Illinois, assignor of one-half of his right to Reuben A. Hitchcock, of same place.

Child's Chair and Carriage.

Specification forming part of Letters Patent No. 224,923, dated February 24, 1880. Application filed July 28, 1879.

To all whom it may concern:

Be it known that I, Joseph W. Kenna, of Chicago, in the county of Cook and State of Illinois, have invented a new and useful improvement in combined child's chair and carriage, which is fully described in the following specification, reference being had to the accompanying drawings, in which—

(Here follows diagram marked p. 198.)

Figure 1 represents a rear elevation of my improved chair and carriage with the chair elevated; Fig. 2, a side elevation of the same, the chair being shown in dotted lines tilted down for conversion into a carriage; Fig. 3, a side elevation of the same when adjusted for use as a carriage.

My invention relates to an article of furniture which, by simple adjustment of the several parts, may be converted from a nursery-chair to a child's carriage, and *vice versa*, so that it may be used for either a child's high-chair or a carriage, as may be desired.

The invention consists in the manner of connecting the chair to its supporting frame and supporting it therein, and also in special devices and combinations of devices, all of which will be hereinafter more fully described, and pointed out definitely in the claims.

In the drawings, A represents the supporting-frame, which in Figs. 1 and 2 is shown in an upright position, adapted to support the chair when it is to be used as a child's high-chair. The rear standards, *a*, of this frame are bent forward as they are extended upward until they reach the front standards, *a'*, to which they are joined at their upper ends, as shown in Fig. 2 of the drawings.

The chair-frame B is of any ordinary construction, being shown in the drawings as substantially rectangular in form, the base-frame *b*, on which the seat *b'* is supported, being nearly square. A foot-rest, C, is attached to the front of the base-frame, the side bars of which may be extended slightly for this purpose. This chair-frame is attached to the upper front portion of the frame A by a hinge-joint located at the front part of the base-frame *b* of the chair. In this instance the two parts are connected by a pivot-rod, D, which passes through the standards *a'* near their upper ends, and the side bars of the base-frame *b* near their front ends, so that the chair is pivoted to its supporting-frame at its lower front corner.

A bail, E, is hinged to the lower rear corner of the frame A and swings forward under a spring-catch, F, on a rod, *f*, at the lower rear

corner of the chair-frame, to support the chair at the rear when in an elevated position, as shown in Fig. 1 of the drawings. Bars G are pivoted at their lower ends to the rear standards, *a*, and are provided with longitudinal slots *g*, through which pins H at the rear lower corners of the chair-frame are inserted.

It is evident that these slotted bars will hold the chair from turning up from its proper position, and, in connection with the supporting-bail, will hold the chair securely in the elevated position shown in Figs. 1 and 2 of the drawings, when it is adapted for ordinary use as a child's high-chair.

In order to convert the chair into a carriage, the supporting-bail is swung backward, when it is evident that the chair-frame will turn back on its pivot into the position shown in dotted lines in Fig. 2 of the drawings, the pins H moving along in the slots of the bars G, which swing downward and inward as the chair turns back until the pins reach the lower ends of the slots. In the upper ends of these bars notches *g'* are cut, which, when the chair is turned down, engage with pins I on the inside of the front standards, *a'*, thereby stopping the movement of the chair. At the same time a spring, J, attached to one of these bars near the middle thereof, engages with a pin, K, at one end of the chair-seat, thereby fastening the chair in this position. The frame is then tilted forward on the front supports, *a*, into the position shown in Fig. 3 of the drawings, when it rests upon wheels L on the bottom of the chair-frame, which is now in an upright position again. By this adjustment it will be seen that the chair is converted into a wheel-carriage, on which the child may be moved from place to place, or thrown forward in front, as shown in dotted lines in the same figure, where it will be out of the way, and in which position it should always be placed for packing.

A shelf or table, M, is pivoted to the front ends of the chair-
200 arms, as shown in Figs. 2 and 3 of the drawings, and may therefore be tilted forward and downward whenever desired, but is held in a horizontal position by suitable springs *m*, attached to the inner corners of the table and arranged to embrace the chair-arms. The carriage is, of course, readily convertible into a chair again by reversing the movements above described.

In making these changes it is not necessary to remove the child from the chair, for instead of tilting the chair back, as shown in Fig. 2 of the drawings, it may be held in an upright position and the frame A tilted forward on its front standards until it assumes the position shown in Fig. 3 of the drawings, and in changing from the latter position to a chair the supporting-frame may be tilted upward and backward into the position shown in Fig. 2 of the drawings, while at the same time the chair is held in an upright position by the attendant.

The spring-catch J engages with the pin K automatically, so that as soon as the chair is brought into the position required to convert it into a carriage it is stopped at once and fastened in position.

The adjustments necessary to convert the chair into a carriage, and *vice versa*, are very simple and easily effected.

201 Complainants' Exhibit Chichester Patent.

W. A. C., Sp'l Ex'r.

Put in evidence, page 24. Also put in evidence as Defendants' Exhibit, page 42.

U. S. Patent No. 259,368.

June 13, 1882.

Lemuel A. Chichester.

Convertible Child's Chair.

corner of the chair-frame, to support the chair at the rear when in an elevated position, as shown in Fig. 1 of the drawings. Bars G are pivoted at their lower ends to the rear standards, *a*, and are provided with longitudinal slots *g*, through which pins H at the rear lower corners of the chair-frame are inserted.

It is evident that these slotted bars will hold the chair from turning up from its proper position, and, in connection with the supporting-bail, will hold the chair securely in the elevated position shown in Figs. 1 and 2 of the drawings, when it is adapted for ordinary use as a child's high-chair.

In order to convert the chair into a carriage, the supporting-bail is swung backward, when it is evident that the chair-frame will turn back on its pivot into the position shown in dotted lines in Fig. 2 of the drawings, the pins H moving along in the slots of the bars G, which swing downward and inward as the chair turns back until the pins reach the lower ends of the slots. In the upper ends of these bars notches *g'* are cut, which, when the chair is turned down, engage with pins I on the inside of the front standards, *a'*, thereby stopping the movement of the chair. At the same time a spring, J, attached to one of these bars near the middle thereof, engages with a pin, K, at one end of the chair-seat, thereby fastening the chair in this position. The frame is then tilted forward on the front supports, *a*, into the position shown in Fig. 3 of the drawings, when it rests upon wheels L on the bottom of the chair-frame, which is now in an upright position again. By this adjustment it will be seen that the chair is converted into a wheel-carriage, on which the child may be moved from place to place, or thrown forward in front, as shown in dotted lines in the same figure, where it will be out of the way, and in which position it should always be placed for packing.

A shelf or table, M, is pivoted to the front ends of the chair-
200 arms, as shown in Figs. 2 and 3 of the drawings, and may therefore be tilted forward and downward whenever desired, but is held in a horizontal position by suitable springs *m*, attached to the inner corners of the table and arranged to embrace the chair-arms. The carriage is, of course, readily convertible into a chair again by reversing the movements above described.

In making these changes it is not necessary to remove the child from the chair, for instead of tilting the chair back, as shown in Fig. 2 of the drawings, it may be held in an upright position and the frame A tilted forward on its front standards until it assumes the position shown in Fig. 3 of the drawings, and in changing from the latter position to a chair the supporting-frame may be tilted upward and backward into the position shown in Fig. 2 of the drawings, while at the same time the chair is held in an upright position by the attendant.

The spring-catch J engages with the pin K automatically, so that as soon as the chair is brought into the position required to convert it into a carriage it is stopped at once and fastened in position.

The adjustments necessary to convert the chair into a carriage, and *vice versa*, are very simple and easily effected.

201 Complainants' Exhibit Chichester Patent.

W. A. C., Sp'l Ex'r.

Put in evidence, page 24. Also put in evidence as Defendants' Exhibit, page 42.

U. S. Patent No. 259,368.

June 13, 1882.

Lemuel A. Chichester.

Convertible Child's Chair.

L. A. CHICHESTER.

CONVERTIBLE CHILD'S CHAIR.

No. 259,368. Patented June 13, 1882.

Fig: 1.

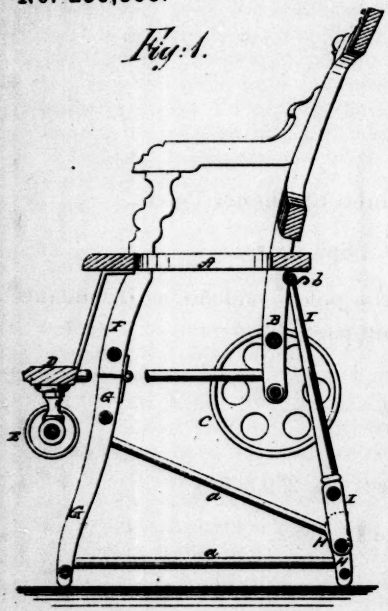
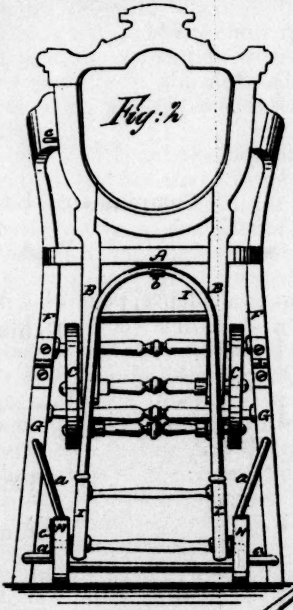
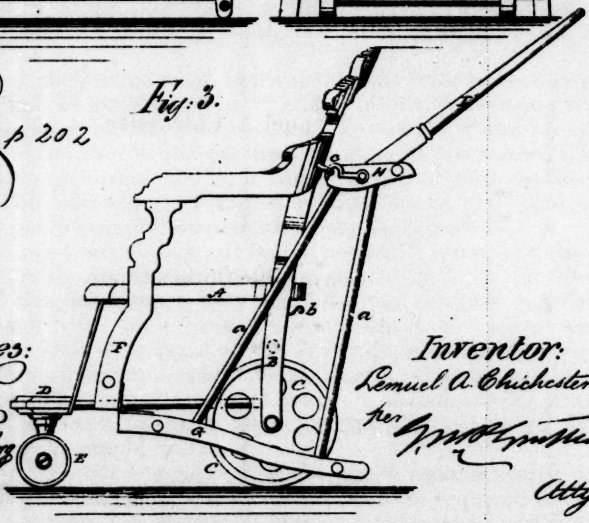


Fig: 2.



No. 362. Derby et al. v. Thompson et al. } p 202

Fig: 3.



Witnesses:
Chas. Nida.
H. C. Wattenberg

Inventor:
Lemuel A. Chichester
per
Attty

The construction of the complete article of furniture is very cheap and simple, so that I obtain a combined chair and carriage cheap, simple, and durable.

Some of the devices herein described and shown may be changed or others substituted therefor; hence I do not limit myself in all particulars to the mechanical devices above described.

It is evident also that the pivotal connection between the chair and its supporting-frame might be made at the rear of the chair instead of in front, the lower frame being changed to suit the circumstances; but the adjustment would not be so convenient, and the construction of the lower frame, A, adapting it to either chair or carriage, would not be so simple.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The frame A, in combination with the chair-frame B, pivoted thereto, as described, the swinging slotted bars G, and pins H on the chair, substantially as described.

2. The frame A, in combination with the bail E, chair-frame B, pivoted at its lower front corners to the frame A, and the yielding rest or support F, substantially as described.

JOSEPH W. KENNA.

Witnesses:
JNO. C. MACGREGOR.
W. C. CORLIES.

203 & 204 UNITED STATES PATENT OFFICE.

LEMUEL A. CHICHESTER, of Phœnicia, New York.

Convertible Child's Chair.

Specification forming part of Letters Patent No. 259,368, dated June 13, 1882. Application filed February 24, 1880.

To all whom it may concern:

Be it known that I, Lemuel A. Chichester, of Phœnicia, in the county of Ulster and State of New York, have invented a new and improved convertible chair; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, and to the letters of reference marked thereon, making part of this specification.

This invention is in the nature of an improvement in convertible chairs; and the invention consists in a chair constructed and arranged as hereinafter specified and claimed, whereby it is adapted for use as a high chair or a trundle or carriage.

In the accompanying sheet of drawings—

(Here follows diagram marked p. 202.)

Figure 1 represents a vertical section of my invention used as a high chair; Fig. 2, a rear view of same, and Fig. 3 a side view when converted into a trundle.

Similar letters of reference indicate like parts in the several figures.

A represents a seat-frame. To the rear of this seat-frame are secured projections B, and to the lower ends of these projections are attached wheels C. Also, to the seat-frame, at its front, is fixed a foot-rest, D, and this foot-rest has placed beneath it wheels E. At or near the front of the seat-frame A are also fixed projections F, and hinged to these last-named projections are parts G of the front legs. Secured to these parts G of the front legs by braces *a* are the lower terminals, H, of the back legs, and pivoted to these lower terminals is a bowed push-handle, I.

To convert this chair into a high chair, the parts G are brought in line with the projections F by means of the hinges which unite these two parts together. The push-handle I is then turned nearly vertical and secured beneath the seat-frame at its rear by a catch, *b*, the push-handle, when in this position, forming the upper continuation of the back legs, and the chair then resting on its legs as shown in Figs. 1 and 2.

To transform this chair into a trundle, the push-handle is detached from the catch *b* and turned back, the seat of the chair then descending, and the parts G of the front legs turning on their hinges and assuming a position nearly parallel with the floor. In this position the chair rests upon the wheels C and E, and the terminals H are secured to its back by catches *c*, as shown in Fig. 3.

The chair, when in position for a trundle, is supported wholly by its wheels independently of its legs, as is the chair shown and described in an application for a patent by me made simultaneously herewith; but in that chair so described the wheels are secured to springs, which are absent from the chair now described.

In this chair the rear wheels are secured directly to the rear projections, B, and the front wheels to the fixed foot-rest D.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

In a convertible chair, the combination of the seat-frame, the projections B, the wheels C, attached directly to the lower ends of said projections, the foot-rest D, the wheels E, supported thereby, the projections F of the seat-frame, the legs G, hinged thereto, the terminals H, the braces *a*, connecting the said legs and terminals, the bowed handle I, hinged to the terminals, and catches *b c*, all constructed and arranged to operate as shown.

LEMUEL A. CHICHESTER.

Witnesses:
H. L. WATTENBERG.
G. M. PLYMPTON.

205 Complainants' Exhibit Chichester Patent.

W. A. C., Sp'l Ex'r.

Put in evidence, page 24. Also put in evidence as Defendants' Exhibit, page 43.

U. S. Patent No. 260,843.

July 11, 1882.

Lemuel A. Chichester.

Convertible Child's Chair.

L. A. CHICHESTER.

CONVERTIBLE CHILD'S CHAIR.

No. 260,843. Patented July 11, 1882.

Fig: 1.

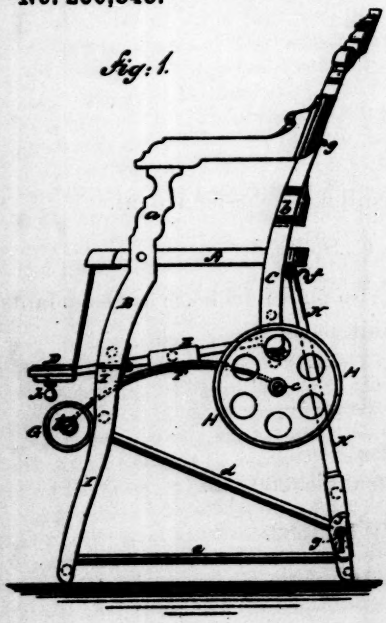


Fig: 2.

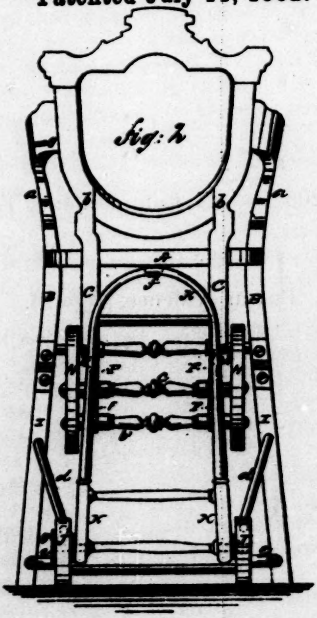


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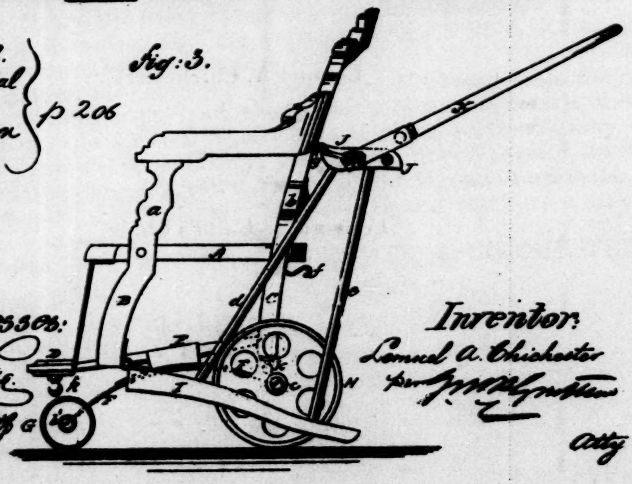
Fig: 3.



Witnesses:
Chas. Nida.
W. Wallace

Inventor:
Samuel A. Chichester
per Munn & Co
Atty

207 UNITED STATES PATENT OFFICE.

LEMUEL A. CHICHESTER, of Phœnicia, New York.

Convertible Child's Chair.

Specification forming part of Letters Patent No. 260,843, dated July 11, 1882. Application filed February 24, 1880.

To all whom it may concern:

Be it known that I, Lemuel A. Chichester, of Phœnicia, in the county of Ulster and State of New York, have invented a new and improved convertible chair; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, and to the letters of reference marked thereon, making part of this specification.

This invention is in the nature of an improvement in convertible chairs; and the invention consists in a chair having a folding leg-frame and convertible from a high chair to a carriage or trundle constructed with downward projections from the rear of the seat-frame, and a foot-rest rigidly affixed to the front of the seat-frame, to which are secured bars to support springs, directly in the ends of which are affixed axles bearing wheels, which support the chair in the lowered position independently of the legs proper of the chair, the said springs being combined with stops to prevent their overweighting, substantially as hereinafter specified and claimed.

In the accompanying sheet of drawings—

(Here follows diagram marked p. 206.)

Figure 1 represents a side view of my invention when used as a high chair; Fig. 2, a rear view of same, and Fig. 3 a side view when the chair is converted into a trundle.

Similar letters of reference indicate like parts in the several figures.

A represents the seat-frame of a chair constructed to be converted from a high chair to a carriage or trundle. Continuous with the front support, *a*, of the arms and with the back posts, *b*, of the back are projections B and C, these projections being, as shown, below the seat-frame and of nearly the same length. Fixed to the projections C and to a foot-rest, D, which foot-rest is rigidly secured to the front of the seat-frame, are two parallel bars, E, which are slightly inclined from rear to front. To these bars, at points about midway of their length, are fixed flat springs F, which springs are secured to the under side of the bars E, at a central point in the springs, and they are parallel with the bars last named. The ends of these springs are free and have fixed to them axles *b' c*, onto which axles are placed wheels G and H. To the projections B of this chair are hinged front legs, I, the projections B forming upper continuations of these front legs. To these legs I, by means of braces *d* and *e*, are secured terminals J of the back legs, and to these terminals, at or near their lower ends, is pivoted a bowed push-handle, K. This push-handle

is of bent wood and continuous in one piece from end to end, and it forms the upper continuation of the rear legs of the chair when the chair is in its elevated position, and when in this elevated position, as shown in Figs. 1 and 2, this push-handle is fastened to the seat-frame A at its rear by a catch, *f*, and when the chair is in this form, with the push-handle nearly vertical and fixed to the seat-frame, the parts I of the front legs are then in continuation of the projections B, the parts I and the projections B forming in this way the front legs, by which and the push-handle K and the terminals J the chair is supported.

I do not herein broadly claim the hinged front legs, the terminals J, connected therewith by braces *d e*, the bowed handle K, and catches to secure it in the upright and lowered positions, as these enter into a claim made by me in another case of even date herewith.

To transform the chair from this elevated position to a carriage or trundle the bowed part of the push-handle K is released from the catch *f*, when the chair-seat A will drop, the projections B turning by reason of the hinges which secure them to the parts I of the front legs, and the parts I will assume a position nearly parallel with the floor, and the chair then be supported on the floor entirely by the wheels G and H, and in every respect independent of the front or rear legs of the chair or any of their parts, the front and rear legs proper and their parts having nothing whatever to do in supporting the chair when converted to its lowered position or trundle form. When the chair is in this way transformed the terminals J are fixed to the back of the chair by suitable catches, *g*, and the push-handle K is turned backward, as shown in Fig. 3, the rear wheels, H, being between the parts I of the front legs and the front wheels, G, beneath, though not attached to the foot-rest D. When in this lowered position the chair is then readily trundled on its wheels from place to place by pushing on the handle K.

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To prevent overweighting the springs F stops *k* are provided. These stops may be fixed to the ends of the rear projections, C, and to the foot-rest D, or otherwise, as may be desired.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The combination, in a convertible chair, of the rear projections, C, and rigid foot-rest D, the bars E connecting them, the springs F borne by said bars, and the wheels G H on the said springs, all arranged to operate substantially as described.

2. The combination, in a convertible chair, of the wheels G H, the supporting-springs therefor, the seat below which said springs are suitably attached, the foot-rest D, rear projections, C, and stops *k* on said projections, substantially as and for the purpose described.

3. The combination, in a convertible chair, of the folding leg-frame, substantially as shown, the wheels G H, springs F to support them, bars E to sustain the springs, and projections from the seat to which the said bars are attached, all constructed and arranged to operate substantially as described.

LEMUEL A. CHICHESTER.

Witnesses:
H. L. WATTENBERG.
G. M. PLYMPTON.

F. CHICHESTER.

High Chair and Carriage.

No. 217,341. Patented July 8, 1879.

Fig: 1.

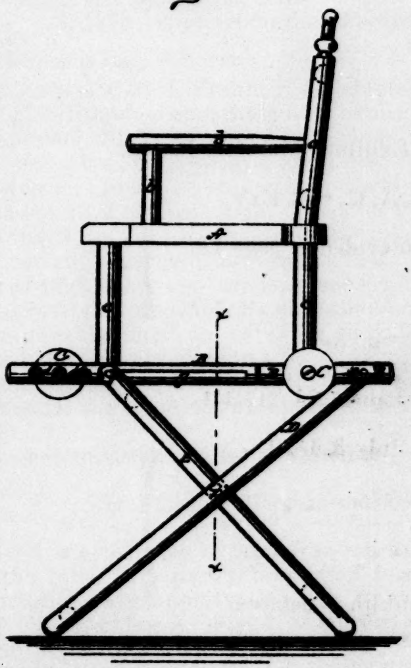

Fig: 2.

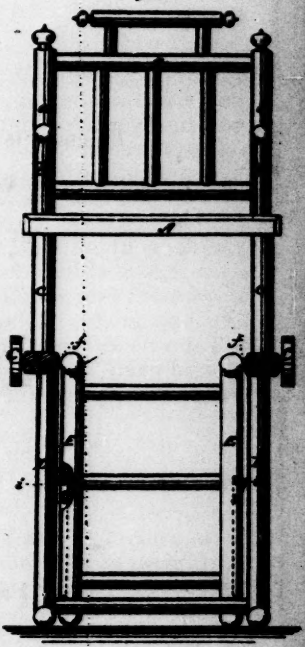

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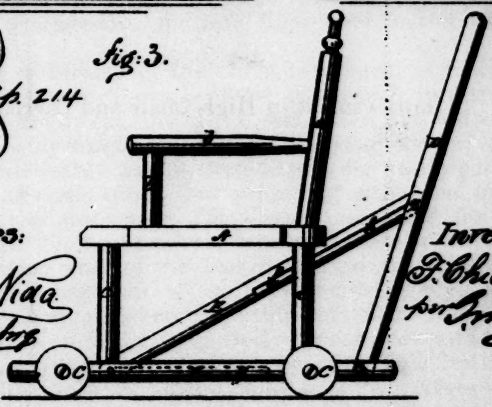
Fig: 3.



Witnesses:

Chas. Nida

H. C. Wattmaff

Inventor:

F. Chichester

per Munn & Co

Atty

213 Defendants' Exhibit Chichester Patent.

W. A. C., Sp'l Ex'r.

Put in evidence, page 42.

U. S. Patent No. 217,341.

July 8, 1879.

Franklin Chichester.

Improvement in High Chair and Carriage.

215 UNITED STATES PATENT OFFICE.

FRANKLIN CHICHESTER, of Milwaukee, Wisconsin.

Improvement in High-Chair and Carriage.

Specification forming part of Letters Patent No. 217,341, dated July 8, 1879; application filed February 27, 1879.

To all whom it may concern:

Be it known that I, Franklin Chichester, of Milwaukee, in the county of Milwaukee and State of Wisconsin, have invented a new and improved child's combined high-chair and carriage; and that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, and to the letters of reference marked thereon, making part of this specification.

This invention is in the nature of an improved child's combined high-chair and carriage; and the invention consists in a child's combined high-chair and carriage constructed with four legs, with their upper ends immovably fixed to the seat-frame, and their lower ends immovably fixed to bars, the bars having rollers attached to them, the chair also having adjustable supports which elevate the chair in one position, and in another position form a push-handle and brace for the same, substantially in the manner hereinafter described.

In the accompanying sheet of drawings—

(Here follows diagram marked p. 214.)

Figure 1 is a side view of my invention used as a high-chair, with one of the roller-bars partly broken off to show slots in their inner sides for adjustable supports; Fig. 2, a front view, partly in section, through line *x x*, Fig. 1; Fig. 3, a side view of my chair used as a carriage.

Similar letters of reference indicate like parts in the several figures.

A represents the seat-frame of the chair, to the rear of which is fixed a back, *a*, and to which are also fixed the arms *b*, in the ordinary manner. To the under side of the seat-frame, and at its four corners, are immovably fixed legs *c*. To the lower ends of these legs are secured, immovably, bars B, these bars being nearly parallel with the sides of the seat-frame, but projecting somewhat to the front and rear of the seat-frame. To these bars, which for convenience I shall call "roller-bars," are fastened rollers or wheels C. To the front projecting ends of the bars B is fixed the foot-rest *d*, and to the rear projecting ends of the bars is fixed a support, D. This support is attached to the rear projecting part of the roller-bars B by pivotal bolts *e*, so that it may be freely turned upon said bolts. Also, to the roller-bars B is secured a support, E. This last-mentioned support is held in place to the roller-bars by swivel-pins *f*, fixed to their upper ends and projecting outwardly. These swivel-

pins enter into slots *g*, formed in the inner edge of the roller bars B, as shown in Figs. 1 and 2. Also, in the support E, and on its outer surface, extending midway from its length to near its lower ends, are formed slots *h*, and into these slots are received swivel-pins *i*, which are fixed to the inner surface of the support D midway between its ends.

The chair constructed substantially as above described is operated as follows: When designed for use as a high-chair to be occupied by the child at a table, the support D is drawn down and beneath the roller-bars B, extending beneath the roller-bars and toward their front in a diagonal direction. As this support D is moved to assume this position, the support E at its upper end will slide toward the front of the roller-bars, being held in position and guided in its movement by the pins *f* at its front ends, which travel in the slots *g* in the inner edge of the roller-bars, and as the support D assumes the diagonal position before described, the swivel-pins *i* in this support travel in the slots *h* in the support E to the upper extremity of the slots, and when in this position the supports D and E will cross each other nearly at right angles, forming substantially, when in this position, legs for the chair, to elevate it for the purposes of a high-chair, as shown in Figs. 1 and 2.

Now, to transform the chair into a trundle-chair, the support D is turned upward parallel with the back of the chair, and when in this position the support E is inclined beneath the seat-frame A, as shown in Fig. 3, and when the supports D and E are in this last-named position, the support D then forms a push-handle, the support E a brace for it, and the rollers C are then brought in contact with the floor, and the chair may be pushed in any direction desired.

Having now described my invention, what I claim as new, and desire to secure by letters patent, is—

1. A child's combined high-chair and carriage with roller-
216 carrying bars, having supports for the seat-frame immovably fixed to the upper surface of said bars, and with adjustable and crossed legs, one set being fixed to the roller-carrying bars by horizontally-adjustable pivots, the crossed legs being also pivoted at their intersection with each other, substantially as and for the purpose described.

2. In a child's combined high-chair and carriage, roller-carrying bars and supports for the seat-frame immovably fixed to their upper surfaces, in combination with crossed under supports provided with pivots and slots at the intersection of said supports with each other, and with pivots and slots in the roller-bars, whereby the under crossed supports may be adjusted to form a push-handle at the back of the chair, and a brace for said handle extending beneath the chair-seat when the chair is used as a carriage, substantially as and for the purpose shown and described.

FRANKLIN CHICHESTER.

Witnesses:
JOHN C. SPENCER.
PETER T. GRAVES.

No. 362.
Derbyetal
H. Thompson
et al.
p. 218

218

F. CAULIER.
Nursery-Chair.

No. 202,788. Patented April 23, 1878.

Fig. 1.

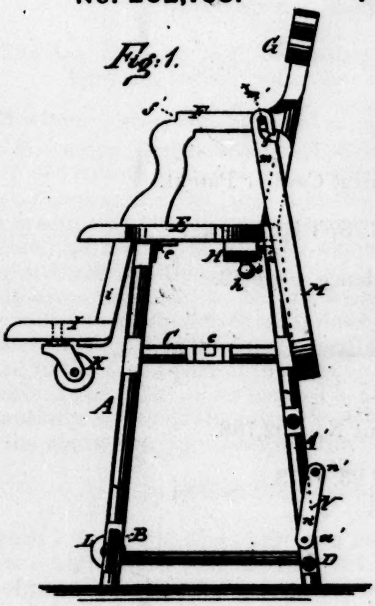


Fig. 2.

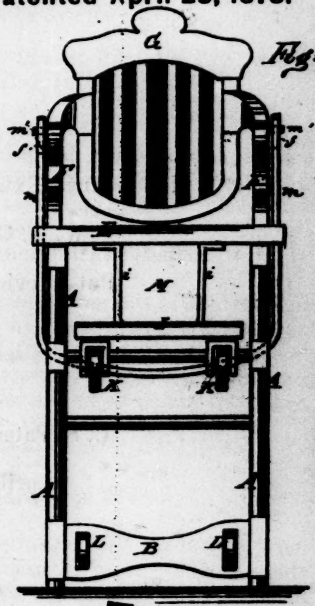


Fig. 4.

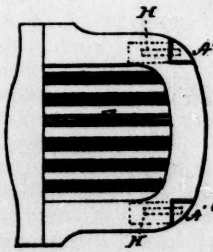
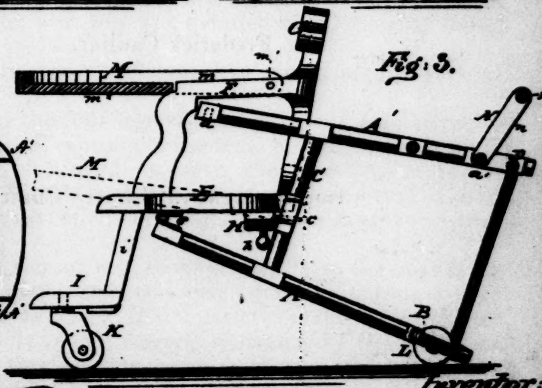


Fig. 3.



Witnesses:
Chas. Nicta
H. C. Hattenberg

Inventor:
Frederick Caulier
per Cyrus Arnold & Co
Attorney.

217 Defendants' Exhibit Caulier Patent.

W. A. C., Sp'l Ex'r.

Put in evidence, page 42.

U. S. Patent No. 202,788.

April 23, 1878.

Frederick Caulier.

Improvement in Nursery Chair.

219 UNITED STATES PATENT OFFICE.

FREDERICK CAULIER, of Philadelphia, Pennsylvania.

Improvement in Nursery-Chairs.

Specification forming part of Letters Patent No. 202,788, dated April 23, 1878; application filed July 27, 1877.

To all whom it may concern:

Be it known that I, Frederick Caulier, of Philadelphia, in the county of Philadelphia and State of Pennsylvania, have invented a new and improved chair; and that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, and to the letters of reference marked thereon, making part of this specification.

This invention is in the nature of an improvement in chairs; and the invention consists in a combined high chair and trundle, the seat thereof hinged to the upper part of the front legs, with rollers secured to the lower part of the legs or stretchers between the same, in combination with rollers secured beneath the foot-rest of the chair, substantially as hereinafter described.

In the accompanying sheet of drawings—

(Here follows diagram marked p. 218.)

Figure 1 is a side view, partly in section, of my invention when used as a high chair. Fig. 2 is a front view of same; Fig. 3, a side view of my invention when used as a low-down chair or perambulator, partly in section; and Fig. 4, a detailed view, showing top of seat and rear legs.

Similar letters of reference indicate like parts in the several figures.

A A A′ A′ represent the four legs of the high chair, connected by rounds or bars B C D. E represents the seat, F F the arms, and G the back. The seat E is hinged at *e e* to the front legs A A, and supported on the rear legs A′ A′ by means of spring-bolts H H, said bolts being provided with knobs or finger-pieces *h h*, and shooting into openings *a a*.

I represents the foot step or rest, secured rigidly to the seat E by means of posts *i i*, so that when said seat turns on its hinges said step or rest will turn with it. K K are casters on the under side of the step or rest I, and L L are wheels, journaled in the round or cross-bar B. M is a tray, having arms *m m*, provided with pins m^1 m^1, which enter irregular-shaped slotted openings *f f* in the chair-arms F; or, *vice versa*, the pins may be in the chair-arms, and the openings in the tray-arms, the leaf of said tray, m^2, resting in rabbets *f′ f′* in the outer extremities of said chair-arms.

N represents a swinging push-handle, consisting of the bars *n n*, pivoted at *a′* to the legs A′, and connected by the cross-bar *n′*. This

push-handle may either be permanently affixed to the legs or other part of the chair, or it may be made detachable, if desired.

The operation is substantially as follows: The chair will be used as a high chair in the ordinary manner, Figs. 1 and 2, either with or without the tray, the latter when not in use hanging down behind the chair-seat, and serving to retain the push-handle N in position.

To convert the high chair into a trundle or perambulator, the bolts H H are withdrawn from the openings *a a*, and the chair-seat turned on the hinges *e* until said bolts come opposite openings *c c* in the rounds or cross-bars C C. The bolts are now permitted to shoot into said openings *c c*, and the chair is then tilted or thrown forward until the casters K K and wheels L L meet the ground or floor. The push-handle N having been thrown out previously to turning down the chair, the latter is now ready for occupancy and use.

The occupant may be seated, with the tray in front in the usual manner; or the latter may be adjusted on the seat E in the same manner as upon the arms F F, affording a couch, on which the occupant may be placed in a reclining position.

By attaching the foot step or rest I to the chair-seat, and furnishing it with casters, I obtain the necessary rolling support in front, without unduly prolonging the chair-base. The employment of casters also facilitates the swinging around of the chair, which will turn readily within its own length, thus adapting it particularly to small rooms.

Having now described the construction and operation of my invention, what I claim as new, and desire to secure by letters patent, is—

1. A combined high chair and trundle, the seat thereof hinged to the upper part of the front legs, with rollers secured to the lower part of the legs, or to a stretcher between the same, and with rollers secured beneath the foot-rest of the chair, substantially as and for the purpose described.

220–226 2. In a combined high chair and trundle, rollers fixed to the lower part of the front legs or their braces, in combination with caster-wheels having vertical and horizontal axes of rotation affixed to the under side of the foot-rest, so that said rollers and said caster-wheels will come in contact with the floor when the legs of the chair are in a horizontal position, substantially as and for the purpose described.

FREDERICK CAULIER.

Witnesses:
H. L. WATTENBERG.
G. M. PLYMPTON.

227 Defendants' Exhibit Patten Patent.

W. A. C., Sp'l Ex'r.

Put in evidence, page 42.

U. S. Patent No. 207,621.

Sept. 3, 1878.

George M. Patten.

Improvement in Children's Convertible Chair.

G. M. PATTEN.

Children's Convertible Chair.

No. 207,621. Patented Sept. 3, 1878.

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Derby et al.
v.
Thompson et al.
} p. 228

Fig. 1.

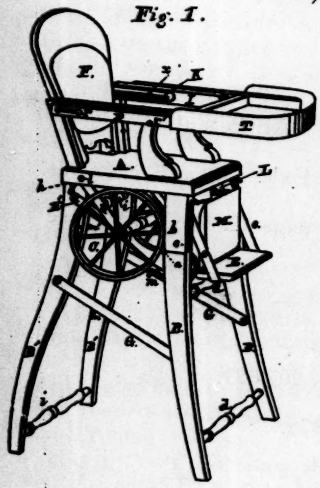


Fig. 2.

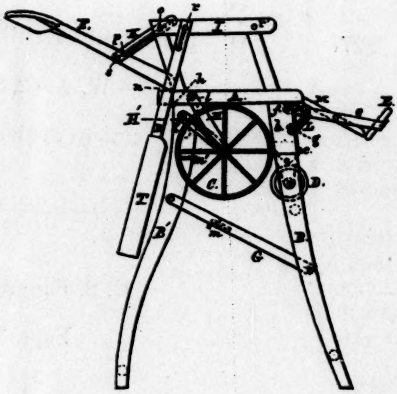


Fig. 3.

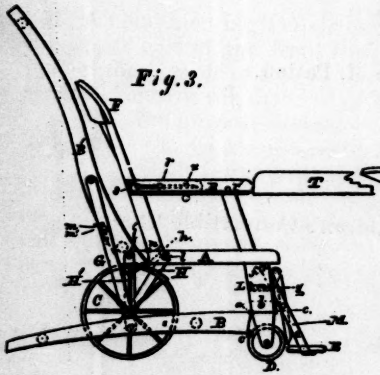
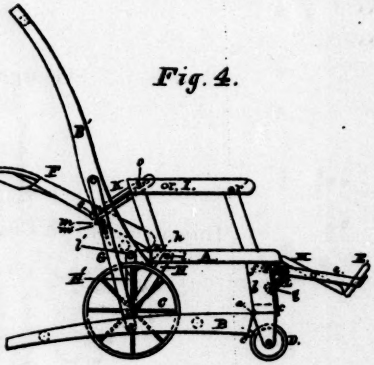


Fig. 4.



Witnesses:

S. M. Rice.
Geo. Rice.

Inventor:

J. M. Patten.

229 UNITED STATES PATENT OFFICE.

GEORGE M. PATTEN, of Yonkers, New York.

Improvement in Children's Convertible Chairs.

Specification forming part of Letters Patent No. 207,621, dated September 3, 1878; application filed February 9, 1878.

To all whom it may concern:

Be it known that I, George M. Patten, of Yonkers, county of Westchester, and State of New York, have invented certain new and useful improvements in convertible chairs, of which the following is a specification:

This invention is designed for the use of children. It is convertible at pleasure into a child's high chair of ordinary form, or a high couch, or a low chair on wheels, or a couch on wheels. In the two latter conditions it is in effect a carriage, and I will so designate it.

My carriage in either condition is provided with high handles at the rear analogous to those on the most approved carriages for children, which handles are formed by what in another condition serves as the rear legs of the high chair.

The device is also provided with an additional part, which may be used at will to retain the child in the chair or couch, and as a table, and which conveniently remains attached, so as not to be lost when out of use.

(Here follows diagram marked p. 228.)

In the annexed drawings, making a part of this specification, Figure 1 is a perspective view of the construction in the form of a high chair, with the table in position for use. Fig. 2 is a side elevation, showing it as a high reclining chair or couch, with the table thrown back out of use. Fig. 3 is a side elevation, showing the device converted into a chair on wheels—one of the forms of my carriage—with the table in front. Fig. 4 is a side elevation, showing it as a couch on wheels, with the table entirely removed.

Similar letters of reference are employed in all the figures to identify like parts.

To the under side of the seat A are rigidly secured the parts *b* of a pair of legs formed in the two parts B and *b*, and hinged together at the point *a*, so that they may be secured rigidly by the catch and spring at *c* into an upright continuous leg or support for the front of the seat A, as in Figs. 1 and 2. The lower parts B are connected together by rounds or braces *d*, as shown in Fig. 1, at such an angle as to secure a sufficiently broad base for the seat, and also to pass outside the wheels C when forming a carriage. By releasing the catches at *c* the lower parts B may be turned back on the hinges at *a* at pleasure, as shown in Figs. 3 and 4. The wheels D are attached at the inside lower end of the upper part *b* of the

legs B *b* by brackets or hangers in such a way that they hang below the ends of the parts *b* of the legs B *b*. The wheels D D are provided with an axle, which acts also as a round or brace for the parts *b*. The foot-board E is attached near the top of the legs or supports B *b* by swinging braces *e e*, pivoted to the legs at *f*. The headed stop-pin *g* is made to hold the foot-board in suitable position as a rest for the child's feet. The same pin prevents the board and brace from swinging back against the wheels D D, but leaves them free to be moved forward. Latches L are pivoted through the braces *e*, and pass over and around the stop-pin *g*, and are provided at the back end with an offset or catch, for a use hereinafter shown. The board M is fastened between and diagonally across the braces *e*, for a purpose hereinafter explained. To the seat A is also attached, by hinges at *h*, a second pair of legs, B′, which are connected together by suitable rounds or braces, as at *i*, Fig. 1, at such an angle as to secure a sufficiently broad base for the seat, and also to pass outside the back F in forming the couch or reclining-chair and carriage on wheels. The two pairs of hinged legs B B′ are connected together by pivoted braces or links G, pivoted at each end, as shown. By means of these braces G the pair of legs B′ are held rigidly in an upright position to support the rear of the seat A, so long as the legs B are held by the latch and spring at *c*. A pair of wheels, C, of suitable material and large size, are provided with an axle, which is connected at or near either end, by means of two sets of swinging braces, H H′, with the seat A, and with the pair of legs B′ by pivots properly located for the purposes desired, as at *l* and *l′*. On the braces G G′ are spring-catches *m m*, and on the legs B′ catches *m′*, for a purpose hereinafter stated. The seat A is also provided with sides or arms I, rigidly affixed at a proper height, and with a back, F, hinged to the seat at the points *n*. The back F is connected with the rigid arms I by means of the slotted slides K, the slots in which have suitable notches or recesses, as at *p*, for adjusting the position of the back F. The slides K K are pivoted to the back F by screws or pins at *s*, passing through a hole in the slide, and are connected to the back ends of the arms I by headed pins O through the slot or notch.

In each of the arms I are fixed two headed pins, *r* and *r′*, to secure the table T, which is supported on the slotted arms P, the pin *r* pivoting the arms through the slots, so as to allow the table, when not desired for use, to be swung upward over the head of the child and the back, so as to hang down behind the chair, as in Fig. 2.

When the table is in use the arms P, secured by the pins *r* through the slots, rest also upon the pins *r′*, and support the table before the arms I, as in Figs. 1 and 3. The pins *r′*, passing into notches in the arms P, prevent the table from being pushed forward, and thus secure the child in the seat. The table may be removed by raising and moving it forward until the pins *r* are in the enlargement at the back of the slots in the arms P, when the arms can be sprung off the pins.

To make the change from the high chair, Fig. 1, to the low seat or carriage, Fig. 3, it is necessary only to raise the springs at *c*,

when the catches are released and the body of the structure may be moved forward and downward (turning on the foot of the legs B *b* as a pivot) until the wheels D rest upon the floor. The legs B B′, tied together by the links G, are by this movement turned backward and upward, and the spring-catch *m*, engaging the catch *m′*, fixes the legs and wheels in the positions shown in Figs. 3 and 4, so that the legs B form suitable handles for the carriage. At the same time the wheels C swing backward, turning on the pivot *i* as a center, until they assume a position sufficiently far to the rear. The chair has now become a low carriage, and the position of the firmly-supported wheels C allows it to be tipped back, thus resting the weight wholly on these wheels to allow of easy turning when required. The construction also allows it again to be safely tilted forward, so that the carriage may be readily made to bridge or jump any obstacles, as a curb-stone or step.

To convert the carriage into a high chair, it is only necessary to release the springs *m* from the catches *m′ m′* and raise the seat from the floor, when the weight of the parts will cause them to reverse the motions just described and assume their position for the high chair, as in Fig. 1, securing themselves at full height by means of the springs and catches *c*.

To form a reclining chair or couch in connection with either the high or low seat, the slotted pieces K are raised at the front end until the pin *o*, Figs. 2 and 4, at the back end is disengaged from the recess and enters the slot. The back F may now be turned on the hinges at *n* until the pins *o* engage in any notches desired and provided, as at *x* in Fig. 1, or until the ends of the slots reach the pins *o*. The foot-board E may then be raised until the notches or offsets in the latches L L engage on the pins *g*, and secure the brace *e* and the foot-board E in the raised position, when the top of the part M is brought near the front edge of the seat A. The part M, with the seat A and the back F, completes the bed of the couch, as shown in Figs. 2 and 4.

When the foot-board is in this raised position it acts also in a great degree as a detent to retain the child in the seat, so that the use of the table for that purpose may be more safely dispensed with.

To change the couch back into the ordinary seat, it is but necessary to raise the back F until the pins *o* re-engage in the recesses or notches P of the slotted pieces K, as shown in Fig. 2, and to raise the latches L L, when the foot-board will fall to its original position.

The chair may be provided with ordinary casters or not, attached to the ends of the legs B B′.

All the metal parts are simple in form and manufacture. The wooden parts may all be made of straight pieces, cut with the grain of the wood, if desired. With such pieces the proper form and broad base are secured, which, in many other chairs of this description, have to be attained by cutting or bending the wood across the grain. It is also quite ornate.

The success of the invention does not depend on making the

catches *m m'* to engage automatically. I have, in my experiments, used a form of catch which requires engagement with the fingers.

There may be any convenient catch or hook to hold the parts B' up near the arm I, and consequently all the other parts firmly in the position for use as a carriage.

I claim as my invention—

1. In a convertible chair and carriage, the combination, with the hinged portions B, of the front legs, hinged rear legs B', and pivoted braces G G', whereby the legs are simultaneously operated in converting the chair into a carriage, or vice versa, as herein specified.

2. In a convertible chair and carriage, the rear legs B' of the chair, hinged at their upper ends directly to the seat A, so that they may be reversed when the chair is changed to a carriage, the lower ends of the legs being turned up and the legs fastened in a nearly vertical position to form handles, substantially as and for the purposes as described.

3. In combination with the chair-body, the hinged rear legs B' and braces H H', connected respectively to the chair-body and legs, serving as a support for the rear wheel C, substantially as set forth.

4. In combination with the chair-body, the front legs *b* B, braces G G', rear legs B', braces H H', and wheels C, subtantially as described.

231 & 232 5. In a convertible chair, the combination of the hinged portions B of the front legs, pivoted braces G G', and hinged rear legs B', said rear legs being provided with suitable device for retaining the said legs in their elevated position, substantially as set forth.

6. The combination of the chair-seat A, front legs *b* B, wheels D, braces G G', hinged rear legs B', pivoted braces H H', and wheels C, substantially as described.

In testimony that I claim the foregoing I have hereunto set my hand and seal.

GEORGE M. PATTEN. [L. S.]

Witnesses:
S. M. RICE.
G. H. RICE.

235 UNITED STATES PATENT OFFICE.

CHARLES H. BARNES, of Poughkeepsie, New York.

Improvement in Nursery-Chairs.

Specification forming part of Letters Patent No. 213,610, dated March 25, 1879; application filed December 26, 1878.

To all whom it may concern:

Be it known that I, Charles H. Barnes, of Poughkeepsie, in the county of Dutchess and State of New York, have invented a new

233 Defendants' Exhibit Barnes Patent.

W. A. C., Sp'l Ex'r.

Put in evidence, page 42.

U. S. Patent No. 213,610.

March 25, 1879.

Charles H. Barnes.

Improvement in Nursery Chairs.

C. H. BARNES.
Nursery-Chair.

No. 213,610. Patented Mar. 25. 1879.

No. 362.
Derby et al. } p. 234
v.
Thompson et al

Fig. 1.

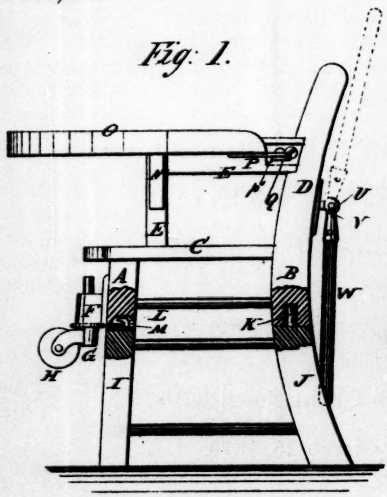


Fig. 2.

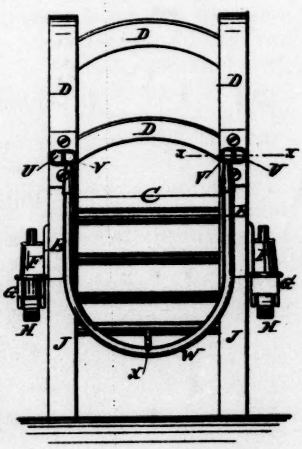


Fig. 5.

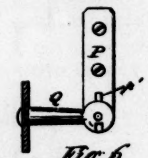


Fig. 6.

Fig. 4.

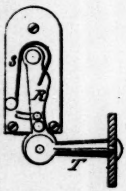
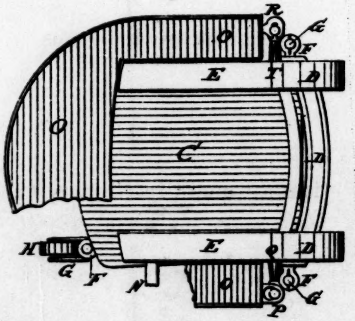


Fig. 3



WITNESSES:
Achilles Schehl.
C. Sedgwick

INVENTOR:
C. H. Barnes
BY. Munn & Co.
ATTORNEYS.

and useful improvement in child's carriage-chair, of which the following is a specification:

(Here follows diagram marked p. 234.)

Figure 1 is a side view of my improved chair, parts being broken away to show the construction. Fig. 2 is a rear view of the same. Fig. 3 is a top view of the same, part being broken away to show the construction. Fig. 4 is a detail view of the detachable catch. Fig. 5 is a detail view of the detachable hinge. Fig. 6 is a detail section of the handle-hinge, taken through the line *x x*, Fig. 2.

Similar letters of reference indicate corresponding parts.

The object of this invention is to furnish an improved child's chair, which shall be so constructed that it may be readily adjusted as a high chair or as a carriage-chair, as may be desired, and which shall be simple in construction and convenient in use.

The invention consists in the frame provided with the dowel-pins and the hooks, in combination with the chair, to adapt the device for use as a high chair; in a child's chair provided with casters attached to the sides of its legs to adapt the said chair to be used as a carriage, and to be placed upon a frame for use as a high chair; in the combination of the plate provided with the slot and the projection, the plate provided with the notch and the spring, the swiveled bolt provided with the knob and the notch, and the swiveled bolt provided with the knob with the arms of the play-table and the arms of the chair, for hinging the said play-table to the said chair detachably; and in the combination of the flattened knobs provided with the grooves and the flattened knobs provided with the tongues with the back posts of the chair and the U-bar to adapt the said bar to serve as a propelling-handle and as a lock-bar, as hereinafter fully described.

A are the front legs, B the back legs, C the seat, D the back, and E the arms, of a child's chair.

The legs A B are made short to adapt the chair to be used as an ordinary child's chair.

To the forward side of the front legs, A, and to the outer sides of the rear legs, B, are attached sockets F, in which are pivoted the stems G of the caster-wheels H, so that the chair may be used as a carriage for a child.

I are the forward legs, and J are the rear legs, of a frame, which is so formed that the said legs I J may serve as a continuation of the legs A B of the chair, and may convert the said chair when placed upon the said frame into a high chair.

To the upper ends of the rear legs, J, of the frame I J are attached dowel-pins K, which enter holes in the lower ends of the rear legs, B, of the chair.

To the upper ends of the forward legs, I, of the frame I J are attached hooks L, which pass up through slots in the plates M, attached to the lower ends of the forward legs, A, of the chair, and hook upon the upper side of the said plates M. With this construction the dowel-pins K and the hooks L connect the frame I J with

the legs A B of the chair securely, so that the device can be used as a child's high chair with safety.

To the outer sides of the forward parts of the arms E are attached blocks N for the play-table O to rest upon. The play-table O is made with arms, which project back along the outer sides of the arms E of the chair.

To the rear end of one of the arms of the table O is attached a plate, P, the rear end of which projects and has a slot formed in it.

The slot of the plate P is made wider at its inner end than at its outer end, the said inner end being made so wide that the knob attached to the side of the circular head of the bolt Q can pass through, and the outer end being made so narrow that the said knob cannot pass through.

To the lower side of the plate P is attached or upon it is formed a projection, p', in such a position as to rest against the edge of the circular head of the bolt Q. In the rear edge of the circular head of the bolt Q is formed a notch, so that when the table O is turned around to the rearward the projection p' may enter the said notch and allow the plate P to be pushed forward, so that it can be raised off the knob of the bolt Q.

236–256 To the end of the other arm of the table O is pivoted a plate, R, which is held forward by a spring, S. In the side edge of plate R is formed a notch to receive a knob attached to the circular head of the bolt T, so that the notched plate R can be readily withdrawn from the knob of the bolt T, to allow the table O to be swung around to detach the plate P from the knob of the bolt Q to detach the table O from the chair when desired.

U are knobs attached to the rear sides of the posts of the chair-back, and V are knobs attached to the ends of a U-shaped bar, W. The knobs U are flattened upon their inner sides, and have grooves formed across the said flattened sides. The knobs V are also flattened upon one side, and have ribs or tongues formed across them of such a size as to fit into the grooves of the knobs U. The grooves and tongues of the knobs U V are so arranged as to interlock with each other when the slightly-elastic bar W has been raised, so as to form a rigid handle for propelling the chair when arranged for use as a carriage. The bar W is released by pressing its tends toward each other to withdraw the tongues of the knobs V from the grooves of the knobs U.

When the device is arranged as a high chair the U-bar W is turned down and its bend engages with the spring-catch X, attached to the lowest rear round of the frame I J, to lock the chair in place upon the said frame.

The bolts Q T are swiveled to the arms E of the chair, so that the table O can be turned back to rest against the back of the chair when not required for use.

Having thus described my invention, I claim as new and desire to secure by letters patent—

1. The combination, with the chair-arms E and back D, of the blocks N, table O, having projection p', the swiveled round-headed

257 Defendants' Exhibit Stevens Patent.

W. A. C., Sp'l Ex'r.

Put in evidence, page 42.

U. S. Patent No. 220,258.

October 7, 1879.

Asher B. Stevens,

assignor to

Thompson, Perley & Waite.

Improvement in Children's Chairs.

A. B. STEVENS.

Child's Chair.

No. 220,258. Patented Oct. 7, 1879.

No. 362
Derby et al.
v.
Thompson et al
} p. 258.

Fig. 1.

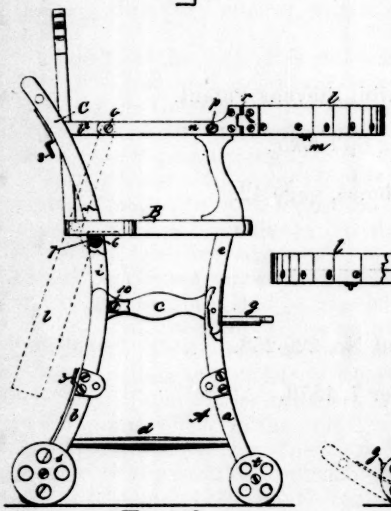


Fig. 2.

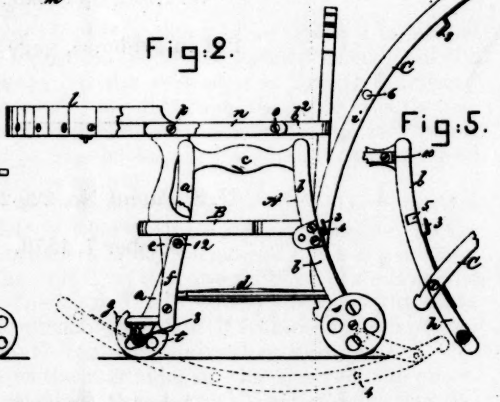


Fig. 5.

Fig. 3.

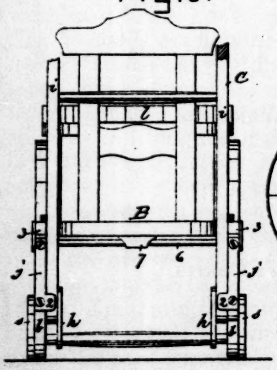


Fig. 4.

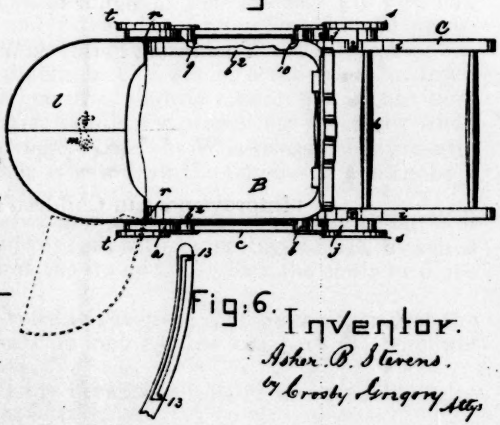


Fig. 6.

Witnesses.
Jos. P. Livermore
J. F. Crowe

Inventor.
Asher B. Stevens.
by Crosby Gregory Attys

notched bolt Q, having a knob, the pivoted spring-held notched plate R, and swiveled round-headed knobbed bolt T, as and for the purpose set forth.

2. The combination in a child's carriage-chair, substantially as described, of the back D and slightly-elastic bar W, having flattened tongue-and-groove spring-knobs U V, the bar W being thus adapted to lock the leg-frame I to the seat-frame A B C D by means of a latch, and to serve as a push-bar to the carriage, as specified.

CHARLES H. BARNES.

Witnesses:
TOWNSEND H. LEE.
L. C. MILLER.

259 UNITED STATES PATENT OFFICE.

ASHER B. STEVENS, of Philadelphia, Pennsylvania, assignor to Thompson, Perley & Waite, of Baldwinsville, Massachusetts.

Improvement in Children's Chairs.

Specification forming part of Letters Patent No. 220,258, dated October 7, 1879; application filed April 16, 1879.

To all whom it may concern:

Be it known that I, Asher B. Stevens, of Philadelphia, county of Philadelphia, State of Pennsylvania, have invented an improvement in children's chairs, of which the following description, in connection with the accompanying drawings, is a specification;

This invention relates to improvements in children's chairs.

In this my improved chair the seat is made vertically movable with relation to a permanently-upright base, which may or may not be provided with rollers or wheels on fixed axles, and the seat is so connected with the base that it may occupy a position at the top of the base, or within and below its top, an independent frame supporting the back portion of the seat when said seat is arranged at the top of the base. This independent frame also serves at times for a handle for the carriage and as rockers.

(Here follows diagram marked p. 258.)

Figure 1 represents my invention arranged as a high chair on wheels. Fig. 2 shows the seat carried down for a low chair or carriage, this figure also showing, in dotted lines, the handle portion turned into a position it may occupy in order to convert the low chair into a rocker; Fig. 3, a rear elevation of Fig. 2; Fig. 4, a top view; Fig. 5, a detail, representing the inner side of one of the back legs of the base; and Fig. 6, a modification.

The rigidly-connected base A has each of its sides composed of side legs, *a b*, shown as joined together by the tie *c* and round *d*; but, if desired, the legs of this base may be variously modified—as,

for instance, the leg *b* may be bent and connected directly with the top of leg *a*. These side portions or legs of the base may be joined by suitable rounds or stretchers.

The chair-seat B, having any usual or proper side arms and back, has at its front, near each corner, a rigid seat-leg, *e*, which is joined with a link, *f*, pivoted at its other or lower end upon the leg *a* at 12, the said seat-leg *e* and link forming a toggle-jointed connection between the seat and base A. These seat-legs *e* also serve to support the foot-rest *g*.

At the rear of the base, and as herein shown, I have by means of links *h*, pivoted the lower end of an independent frame, C, composed, preferably, of two curved wooden bars, *i*, which serve a threefold purpose, viz: First, as a movable rear support for the seat; second, as a handle for the low chair or carriage; and, third, as rockers for the chair.

At the rear of the legs *b* are fastening devices *j*, shown as provided with lugs 2, to prevent the lower ends of the frame C next the links *h* from moving outwardly while the frame C is in its most upright position, to serve as a support for the rear of the chair-seat at a distance above the top of the legs of the base, the pins 4 on bars *i* then resting in slots 5, or guides (see Fig. 5) at the inner sides of the legs *b*, the rear end of the seat then resting upon the round 6 between the bars *i*, a seat-holding projection, 7, fitting over or engaging the said round, as in Fig. 1.

At the rear of legs *b* are hooks 3, which, when the seat is carried down, as in Fig. 2, permit the frame C to be turned back, the pin 4 then being held by the hooks 3, leaving the frame in suitable position to serve as a handle for the low chair or carriage. This frame C has its bars *i* curved, so as to serve the purpose of rockers when desired, the said frame being adapted to be turned to a position at the under side of the base, as shown in dotted lines, Fig. 2, the ear pieces or hooks 8 on the bars *i* then hooking over or engaging a connecting-round between the legs, or engaging other portions of the base, while the pins 4 rest against the inner but lower edges of the legs *b*.

At the upper ends of each pair of legs are stops 9 10. The one 9 serves as a back-stop for the link *f* when the seat is as in position for a high chair, as in Fig. 1, and at the same time the stop 10 serves to arrest the frame C, to prevent it moving farther toward the center of the chair.

The table *l* is made in two parts, connected together at or near its center by a fastening device *m*, and each half is hinged to table-holding links *n*, pivoted at *o*, each link having a slot or equivalent suitable to engage a headed screw or projection, *p*, attached to the arm b^2. This table, when separated at its center, may be turned on the hinges *r* each side the side arms, and, if desired, the links *n* may be disengaged from projections *p*, and be turned downward to the rear of the chair, and be then again connected together or not, as in dotted lines, Fig. 1.

The lower ends of the legs *a b* of the base are shown as provided

with wheels *s t*, by which to support the base and permit it to be rolled as a carriage.

Instead of the links *f* to connect seat-legs *e* with the legs *a* of the base, I may groove the inner sides of the legs as shown in the detail, Fig. 6, a pin on each seat-leg *e* entering this groove, and resting in the short portions 13 thereof when the seat is most elevated or depressed.

I claim—

1. In a convertible high and low chair or carriage, the combination of a rigid upright base, a vertically-moving chair-seat, and a frame, C, pivoted to the base, and serving convertibly as a seat-support or trundling-handle, substantially as described.

2. The base A, a vertically-moving chair-seat, B, seat-legs *e*, links *f*, and stops 9 10, in combination with the frame C, serving as a seat-support or a trundling-handle, substantially as shown and described.

3. The combination, with a convertible chair, of a frame, C, constructed substantially as shown, and adapted to serve as a seat-support, a trundling-handle, and rockers, substantially as specified.

4. The base and frame C, having curved side arms, *i*, combined with devices, substantially as described, to hold the said frame in position with relation to the base to support the seat for a high chair, or to extend back of it and serve the purposes of a handle, as and for the purpose set forth.

5. The combination of the chair-seat, the separable table hinged to supporting-links, and the supporting-links pivoted to the chair-arms, whereby said table may be swung to the sides and rear of the seat, substantially as described.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

ASHER B. STEVENS.

Witnesses:
G. W. GREGORY.
L. F. CONNOR.

261 *Clerk's Certificate to Volume II.*

UNITED STATES OF AMERICA, *Massachusetts District*, } *ss:*

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the exhibits in print in the cause in equity entitled—

DANIEL L. THOMPSON *et al.*, Complainants,
v.
PHILANDER DERBY *et al.*, Defendants. } No. 2273.

in said circuit court determined.

And I further certify that this volume, entitled "Transcript of Record, volume II, exhibits in print," and an accompanying vol-

ume, having my certificate of even date herewith thereto annexed, entitled "Transcript of Record, volume I, record, evidence, not including exhibits, opinions of the court, proceedings on appeal," together contain a true copy of the record and of all proceedings, including the opinions of the circuit court and defendants' appeal to the Supreme Court, in said above-entitled cause in said circuit court determined.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this twenty-fourth day of April, in the year of our Lord, one thousand eight hundred and eighty-nine, and of the Independence of the United States the one hundred and thirteenth.

Seal of the Circuit Court, Massachusetts.

JOHN G. STETSON, *Clerk.*

262 Supreme Court of the United States.

PHILANDER DERBY, ARTHUR P. DERBY, GEORGE HODGMAN, and GEORGE W. CANN, Appellants,
vs.
DANIEL L. THOMPSON, CHARLES A. PERLEY, and GILMAN WAITE, Complainants and Appellees.

No. 1155. October Term, 1889.

In error to the circuit court of the United States for the district of Massachusetts.

Notice is hereby given, in conformity with section 9 of rule 10 of this court, as promulgated March 28, 1887, that the appellants intend to rely on the following errors, to wit:

First error. That the court below held the second claim of letters patent No. 224,923, dated February 24, 1880, granted to Joseph W. Kenna, to be good and valid in law.

Second error. That the court below held the defendants' chairs known as Exhibits Defendants' Chairs 1 and 2 to be infringements of said second claim of the said letters patent No. 224,923, dated February 24, 1880.

Third error. That the court below held the chairs marked Exhibits A and B and offered in evidence before the master to be infringements of said letters patent No. 224,923, dated February 24, 1880.

Fourth error. That the court below, in the taxation of
263 costs, allowed travelling fees of the witnesses Stevens, Kenna, Vanderploeg, and Reed in excess of one hundred miles each.

Fifth error. In that the court below allowed full costs to the complainants and appellees, although the same were defeated at final hearing as to one branch of the case, namely, so much of the original suit as was based upon the alleged infringement of said letters patent No. 224,923 by the manufacture and sale by defendants of the chair known as the Parker chair.

Further, in obedience to the provisions of said rule notice is

hereby given that the appellants (the respondents below) think the following parts of the record to be necessary for the consideration of this appeal, to wit: The bill of complaint, answer, and replication, pages 1 to 12 of transcript; the decree for perpetual injunction and for reference to a master, pages 13 and 14 of transcript; the master's report, pages 15 to 17 of transcript; defendants' exceptions to master's report, pages 18 to 19 of transcript; the final decree, pages 19 and 20 of transcript; the notice of taxation and proceedings relating to the same, pages 20 to 22 of transcript; the deposition of A. B. Stevens, pages 23 to 31 of transcript; the offer of defendants' exhibits, pages 42 and 43 of transcript; the deposition of L. A. Chichester, pages 43 to 46 of transcript; deposition of John Blythe, pages 47 and 48 of transcript; deposition of L. A. Chichester, pages 48 to 55 of transcript; deposition of E. P. Chichester, pages 55 to 59 of transcript; deposition of F. F. Parker,
264 pages 59 to 73 of transcript; deposition of G. I. Alden, pages 74 to 99 of transcript; deposition of Joseph P. Livermore, pages 100 to 114 of transcript; deposition of Joseph W. Kenna, pages 114 to 129 of transcript; deposition of H. Vanderploeg, pages 130 and 131 of transcript; deposition of E. J. Reed, pages 132 to 134 of transcript; deposition of Joseph P. Livermore, pages 135 to 150 of transcript; deposition of George I. Alden, pages 151 to 155 of transcript; opinions of the court, pages 164 to 167 of transcript; appeal, pages 168 to 170 of transcript; certificate of clerk, page 171 of transcript; bond, pages 172 to 175 of transcript; citation, page 176 of transcript, all of the above references being made to the first volume of said transcript; Defendants' Exhibit File of Kenna Patent, pages 185 to 194 of transcript; Complainants' Exhibit Kenna Patent, pages 198 to 200 of transcript; Complainants' Exhibits Chichester Patents, pages 202 to 208 of transcript; Defendants' Exhibit Chichester Patent, pages 214 to 216 of transcript; Defendants' Exhibit Caulier Patent, pages 218 to 220 of transcript; Defendants' Exhibit Patten Patent, pages 228 to 231 of transcript; Defendants' Exhibit Barnes Patent, pages 234 to 236 of transcript; Defendants' Exhibit Stevens Patent, pages 258 to 260 of transcript, and certificate following page 260 of transcript, the last-named references being made to the second volume of said transcript.

Respectfully, ARTHUR v. BRIESEN,
Attorney for Appellants.

265 [Endorsed:] U. S. Supreme Court. P. Derby *et al.*, appellants, against Daniel L. Thompson *et al.*, appellees. # 1155. Oct. term, '89. Notice under rule 10. Briesen, Steele & Knauth, solicitors for appellants, 229 Broadway, New York. Due service of a copy of the within notice is hereby admitted this 6th day of June, 1889. J. E. Maynadier, sol'r for appellees.

[Endorsed:] Supreme Court U. S. 1889, Oct'r term. No. 362. Philander Derby *et al.*, app'ts, *vs.* Daniel L. Thompson *et al.* Statement of errors & designation by appellants of parts of record to be printed.

[Stamped:] Office Supreme Court U. S. Filed Jun- 14, 1889. James H. McKenney, clerk.

266 Supreme Court of the United States.

PHILANDER DERBY *et al.*, Appellants,
vs.
DANIEL L. THOMPSON *et al.*, Complainants and Appellees.
} No. 1155. October Term, 1889.

In error to the circuit court of the United States for the district of Massachusetts.

Notice is hereby given, in conformity with section 9 of rule 10 of this court, promulgated March 28, 1887, that appellees (complainants below) think the following parts of the record material, said parts being in addition to the parts heretofore noticed by appellants (defendants below) as thought necessary by appellants for consideration of this appeal:

1. Table of contents preceeding page 1 of vol. 1, Transcript.
2. The paragraph at middle of page 19 of Transcript stating that defendants' exceptions to the master's report were overruled.
3. Deposition of Gilman Waite and all other matter on pp. 32–41 of Transcript.
4. Redirect examination by J. E. Maynadier in "deposition of J. P. Livermore resumed," beginning with Int. 66, p. 155 of Transcript, and ending at the end of answer to Int. 66, p. 157 of Transcript.

267 5. Second deposition of Asher B. Stevens from Int. 1, page 158 of Transcript, to end of Ans. to Int. 7, page 160 of Transcript.

6. Stipulation on pages 161, 162, 163 of the Transcript.

All above in vol. 1 of Transcript.

It is not thought material to print the certificate of the Commissioner of Patents and the assignments, pp. 177–183 of Transcript, vol. II, for the reason that no error assigned relates to appellees' title.

Respectfully,

J. MAYNADIER,
Solic'r for Appellees.

268 [Endorsed:] Supreme Court U. S. 1889, October term. No. 362. Philander Derby *et al.*, app'ts, *vs.* Daniel L. Thompson *et al.* Statement by appellees of parts of record to be printed.

[Stamped:] Office Supreme Court U. S. Filed Aug. 26, 1889. James H. McKenney, clerk.

Endorsed on cover: Case No. 13,562. Massachusetts C. C. U. S. Term No., 362. Philander Derby, Arthur P. Derby, George Hodgman, and George W. Cann, appellants, *vs.* Daniel L. Thompson, Charles A. Perley, and Gilman Waite. Filed May 27, 1889.

RECORD CASE No. 14,590.

Supreme Court of the United Sta

OCTOBER TERM, 1891.

TERM No. 362.

PHILANDER DERBY, ARTHUR P. DERBY, GEORGE [illegible]
AND GEORGE W. CO[illegible]

vs.

DANIEL L. THOMPSON, CHARLES [illegible]
GERMAN WAITE.

APPEAL FROM THE CIRCUIT COURT OF THE [illegible]
DISTRICT OF MASSACHUSETTS.

BRIEF ON BEHALF OF THE APPE[illegible]

ARTHUR [illegible]

266 Supreme Court of the United States.

PHILANDER DERBY *et al.*, Appellants,
vs.
DANIEL L. THOMPSON *et al.*, Complainants and Appellees.

No. 1155. October Term, 1889.

In error to the circuit court of the United States for the district of Massachusetts.

Notice is hereby given, in conformity with section 9 of rule 10 of this court, promulgated March 28, 1887, that appellees (complainants below) think the following parts of the record material, said parts being in addition to the parts heretofore noticed by appellants (defendants below) as thought necessary by appellants for consideration of this appeal:

1. Table of contents preceeding page 1 of vol. 1, Transcript.
2. The paragraph at middle of page 19 of Transcript stating that defendants' exceptions to the master's report were overruled.
3. Deposition of Gilman Waite and all other matter on pp. 32–41 of Transcript.
4. Redirect examination by J. E. Maynadier in "deposition of J. P. Livermore resumed," beginning with Int. 66, p. 155 of Transcript, and ending at the end of answer to Int. 66, p. 157 of Transcript.

267 5. Second deposition of Asher B. Stevens from Int. 1, page 158 of Transcript, to end of Ans. to Int. 7, page 160 of Transcript.

6. Stipulation on pages 161, 162, 163 of the Transcript.

All above in vol. 1 of Transcript.

It is not thought material to print the certificate of the Commissioner of Patents and the assignments, pp. 177–183 of Transcript, vol. II, for the reason that no error assigned relates to appellees' title.

Respectfully,

J. MAYNADIER,
Solic'r for Appellees.

268 [Endorsed:] Supreme Court U. S. 1889, October term. No. 362. Philander Derby *et al.*, app'ts, *vs.* Daniel L. Thompson *et al.* Statement by appellees of parts of record to be printed.

[Stamped:] Office Supreme Court U. S. Filed Aug. 26, 1889. James H. McKenney, clerk.

Endorsed on cover: Case No. 13,562. Massachusetts C. C. U. S. Term No., 362. Philander Derby, Arthur P. Derby, George Hodgman, and George W. Cann, appellants, *vs.* Daniel L. Thompson, Charles A. Perley, and Gilman Waite. Filed May 27, 1889.

146 U 8476

Office Supreme Court, U.S.
FILED.
APR 14 1892
JAMES H. McKENNEY,
CLERK.

RECORD CASE No. 13,562.

Supreme Court of the United States.

OCTOBER TERM, 1891.

TERM No. 362.

PHILANDER DERBY, ARTHUR P. DERBY, GEORGE HODGMAN AND GEORGE W. CANN,

Appellants,

vs.

DANIEL L. THOMPSON, CHARLES A. PERLEY AND GILMAN WAITE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF ON BEHALF OF THE APPELLANTS.

ARTHUR v. BRIESEN,
Of Counsel for Appellants.

Evening Post Job Printing House, New York.

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RECORD CASE NO. 13,562.

Supreme Court of the United States.

OCTOBER TERM, 1891.

Term No. 362.

PHILANDER DERBY, ARTHUR P. DERBY, GEORGE HODGMAN and GEORGE W. CANN,
Appellants,

vs.

DANIEL L. THOMPSON, CHARLES A. PERLEY and GILMAN WAITE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSSETTS.

BRIEF ON BEHALF OF THE APPELLANTS.

Statement of the Case.

This suit was instituted in March 1886, against four individual defendants, the appellants here, for supposed infringement of a patent issued to J. W. Kenna and R.

A. Hitchcock, February 24, 1880, the said patent being numbered 224,923.

The Kenna patent, which is reproduced on pages 141 to 143 of the Record, contains two claims, the second of which only is relied upon in this suit. The Court below in its opinion on final hearing (p. 126, Record), held that the second claim of said Kenna patent is valid, and that certain of the defendants' chairs, to wit, those made in accordance with the Chichester patents, 259,368 of June 13 1882 (p. 143, Record), and 260,843 of July 11, 1882 (p. 145, Record), infringed the said second claim of the Kenna patent, but that certain other chairs of defendants, which are known as the Parker chair, did not infringe upon said patent.

An interlocutory decree, entered in conformity with this opinion (p. 8, Record), was entered December 3, 1887, referring the question of accounting to a master.

The master found that in addition to the defendants' chairs that had been before the Court at final hearing, namely, "Complainants Exhibit Defendants' Chairs 1 and 2," two certain other chairs of defendants, to wit, Exhibits A and B, should be accounted for. The Master accordingly reported the stipulated amount of damages against the four kinds of chairs just referred to (pp. 9 and 10 Record).

Exceptions were filed to the Master's report (pp. 10 and 11, Record), and argued before the Court, which in an opinion filed January 18, 1889 (p. 128, Record), sustained the Master and overruled the exceptions.

Costs were thereupon taxed against the defendants, in which, among other items, mileage fees of four witnesses, covering 4,160 miles, were taxed against the defendants (see p. 13, Record). An appeal was taken to the Court from the Clerk's taxation, but the defendants' objections to the same were in all things overruled (pp. 13 and 14, Record) and a final decree entered on February 8, 1889 (p. 12, Record), wherein complainants were awarded five hundred and eighty-one dollars ($581) damages and ten hundred and sixty-one dollars and twenty-six cents ($1,061.26) costs.

From this decree this appeal was taken.

In obedience to the provisions of section 9 of rule 10 of this Court, as promulgated March 28, 1887, the appellants filed with the Clerk, within ninety days after filing the record in this Court, a statement of errors on which they intend to rely (p. 160, Record).

The following is a copy of the said

Assignment of Errors.

First Error.—That the Court below held the second claim of Letters Patent No. 224,923, dated February 24, 1880, granted to Joseph W. Kenna, to be good and valid in law.

Second Error.—That the Court below held the defendants' chairs, known as Exhibits Defendants' Chairs 1 and 2, to be infringements of said second claim of the said Letters Patent No. 224,923, dated February 24, 1880.

Third Error.—That the Court below held the chairs marked Exhibits A and B, and offered in evidence before the Master, to be infringements of said Letters Patent No. 224,923, dated February 24, 1880.

Fourth Error.—That the Court below, in the taxation of costs, allowed traveling fees of the witnesses Stevens, Kenna, Vanderploeg and Reed in excess of one hundred miles each.

Fifth Error.—In that the Court below allowed full costs to the complainants and appellees, although the same were defeated at final hearing as to one branch of the case, namely, so much of the original suit as was based upon the alleged infringement of said Letters Patent No. 224,923 by the manufacture and sale by defendants of the chair known as the Parker chair.

Argument.

1. Is complainant's patent valid?

We will discuss this question from two points of view:

(*a.*) In view of the state of the art and the admissions made by the patentee to the Commissioner of Patents.

(*b.*) In regard to operativeness.

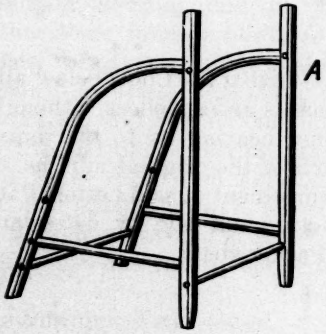
(*a.*) The patent describes a jointed chair, which when extended is a high chair, while when contracted it is a species of low child's carriage.

The second claim of the patent is for the combination of four elements and reads as follows (p. 143):

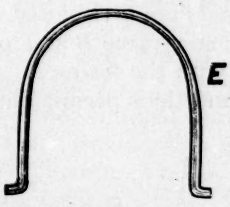
"*The frame A, in combination with the bail E, chair "frame B, pivoted at its lower front corners to the frame "A, and the yielding rest or support F, substantially as "described.*"

These four elements appear, in view of the specification and drawing of the patent, and in the light of a certified copy of Mr. Kenna's Patent Office model, which is before the Court, to have the following meaning:

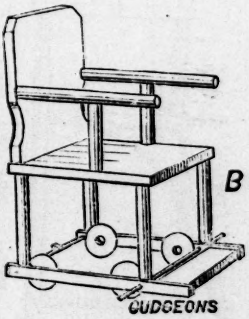
The frame A is the lower supporting frame having this appearance:



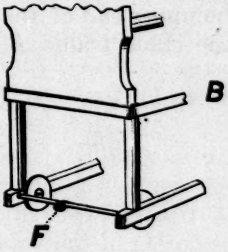
The bail E is a bent piece of wood or metal having in the certified model a flat top, about like the following sketch:



The chair frame B is in form of an ordinary child's chair with rollers at the lower part and pivots or gudgeons in front; thus:



The yielding rest or support F is a small spring catch on a rear tie-rod of the chair frame *B*, about like this:

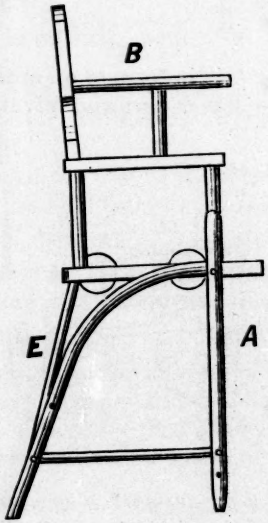


When these four elements of the second claim are united into one structure, the gudgeons of the chair frame *B* are

inserted into holes in the upper part of the supporting frame *A*, and the ends of the bail *E* are sprung into holes in the lower part of the frame *A*.

As a result the parts are articulated on the front pivotal connection of the chair frame *B* and on the pivotal connection of the bail with the frame *A*.

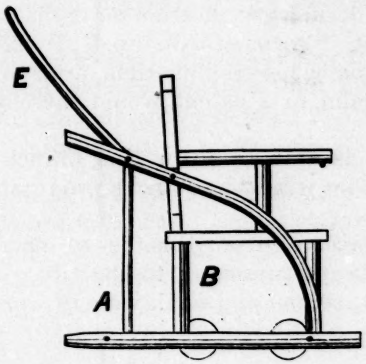
These pivotal connections permit the chair frame to be raised thus:



In this position the upper end of the bail *E* rests under the rear tie-rod of the chair frame *B*, having passed the spring *F*, thus:

It is perfectly clear from the foregoing analysis of the elements of the second claim that in the upright position the structure is inoperative, as there is nothing to prevent the chair frame from tilting *forward* on its gudgeons, and also as the bail *E* is *not locked* to or by the spring *F*. Hence nothing hinders the bail from springing forward from under the rear tie-rod, and from throwing the child in the chair out *backward*. But as this feature of inoperativeness will be fully considered under its own head, we give it here but passing notice.

When the four elements of the second claim are moved relatively to one another to produce a low chair or child's carriage, the parts appear in the following relation:



In this position the catch or spring *F*, performs no function of any kind and it fails to engage with the bail, being idly carried on the back part of the lower chair frame. The bail now forms a push-handle.

It follows that the four elements of the second claim, co-act, if they co-act at all, only when the chair is raised, unless it be said that they also *permit* it to be lowered. But in the lowered chair they do not co-operate.

If the Patentee Kenna was the first to construct a chair which could be raised and lowered and which depends on

a pivoted bail to help support it in the raised position, and to form a push-handle in the lowered position, his patent would be entitled to a liberal interpretation. If, however, it should appear that prior to his invention such a combination of the lower supporting frame, with the chair frame hinged or pivoted thereto and with the pivoted bail and push-handle already existed, he would not be entitled to hold his claim except for the addition of the yielding rest or support *F*, provided he can show that said yielding rest affects in *any* beneficial and novel manner the action of the remaining members, and is itself new in such a combination, or patentably distinguishable from other yielding rests previously in use. And if it should appear that such a yielding rest or support (or as the Kenna specification on the last line of page 141 also calls it, "*spring catch*," p. 127) existed in the like, or an analogous combination, prior to Kenna's invention, his claim to a patent would thereby be proven untenable.

Much light is thrown upon this branch of the inquiry by the file wrapper of the Kenna patent (p. 132–140, Record).

It will be perceived from this file wrapper that originally the applicant presented to the Office 8 claims, of which the first, second and sixth were in words as follows (p. 135):

"FIRST.—*In a combined chair and carriage an upright "supporting frame A, in combination with a chair frame, "hinged thereto at its lower front or rear corners, where- "by the two parts may be adjusted in relation to each "other, substantially as and for the purpose set forth.*

"SECOND.—*The supporting frame A, in combination "with the chair frame hinged thereto at its lower front "corners, and the movable support E, substantially as "described.*

"SIXTH.—*The chair B, provided with wheels L, in "combination with the tilting frame A, pivoted at its "upper end to one edge of the chair frame and constructed "and arranged so that where (when) the tilting frame is "turned down into a horizontal position the chair wheels "will project below the latter, so that the structure will "rest thereon, substantially as described.*"

All these claims were on the 23d September, 1879, rejected (see p. 136); the first and second claims on the patents of Caulier, and of Harris and Childs; the sixth on the patent of Chichester No. 217,341.

The Court will perceive that the second claim so rejected was for the combination of three elements, namely, the supporting frame, the chair frame, and the movable support *E* or bail.

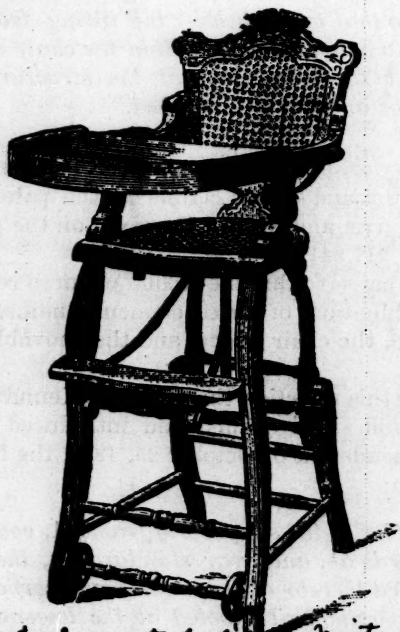
Upon receiving this rejection the applicant Kenna erased the first, second and sixth claims, and introduced in lieu thereof by his amendment of October 25, 1879, the following new 3d claim:

"*The combination of the supporting frame A, composed "of front standards a*[1]*, and rear standards a, the chair "frame B, pivoted thereto at its lower front corner, and "the curved supporting bail pivoted at the lower end of "the said standards, a, substantially as described and "shown.*"

This claim, by official action of December 12, 1879, (p. 138) was rejected upon a chair shown in Heywood Bros. catalogue, known as the Pearl Chair No. 292. Thereupon said new 3d claim was, by amendment of December 17, 1879, eliminated from the case, and the patent was issued with the claim in suit.

The Heywood Bros. catalogue upon which the claim of October 25, 1879, was rejected and in view of which the said claim was canceled, is an exhibit in this cause (see p. 34, Record) and is before the Court, but has not been

copied into the Record. It shows, sub No. 292, the following illustrations:

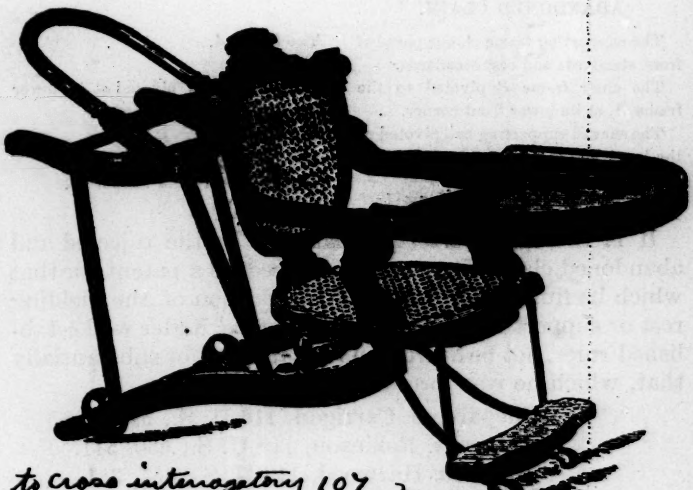


Interrogated to by Gilman Waite in answer

Pearl Folding Table and Carriage.

AS TABLE.

No 292.



to cross interrogatory 107. M.a.e., Spl Ex.

Pearl Folding Table and Carriage.

AS CARRIAGE.

No. 292.

The Court will observe that the above illustration is of such a character, that a spring catch, if used on the "Pearl" chair would not be visible thereon. Hence the Examiner rejected, in view of that catalogue-illustration the claim for the combination of the elements *A*, *B*, *E*, but allowed the claim for the combination of the four elements

A, *B*, *E*, *F* (not knowing that the Pearl chair itself had a spring catch).

To make this clear a description of the respective elements in both claims is given in the following double column:

ELEMENTS AS DESCRIBED IN KENNA'S REJECTED AND ABANDONED CLAIM.	ELEMENTS AS DESCRIBED IN KENNA'S ALLOWED CLAIM.
The supporting frame *A*, composed of front standards and rear standards.	The frame *A*.
The chair frame *B*, pivoted to the frame *A*, at its lower front corner.	The chair frame *B*, pivoted at its lower front corners to the frame *A*.
The curved supporting bail pivoted at the lower end of said standards *a*.	The bail *E*.
	The yielding rest or support *F*.

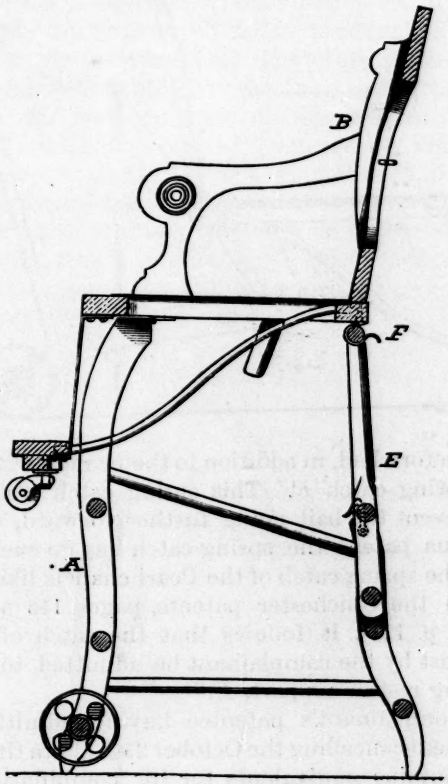
It is therefore perfectly clear that by the rejected and abandoned claim Kenna sought to secure a patent for that which he finally received, less the addition of the yielding rest or support *F*. Kenna can therefore, under well established rules, not be heard to now claim that or substantially that, which he was forced to erase.

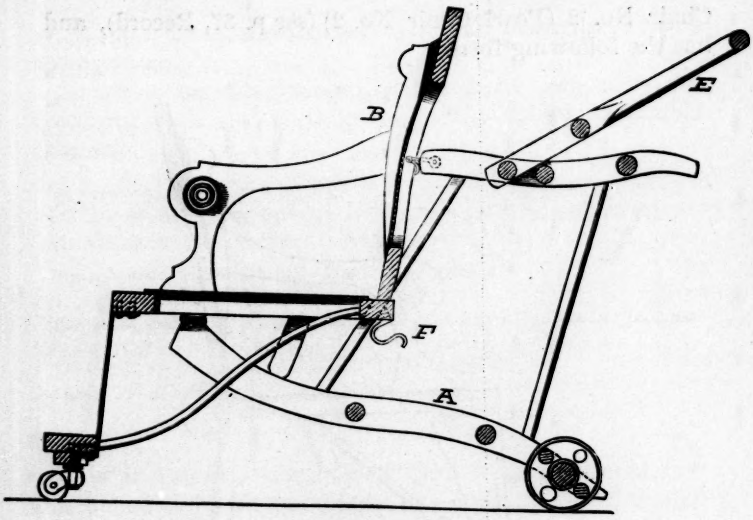
Shepard *vs.* Carrigan, 116 U. S., 593, 598.
Sutter *vs.* Robinson, 119 U. S., 530, 541.
Mahn *vs.* Harwood, 112 U. S., 354, 361.
Yale Lock Co. *vs.* Berkshire, 135 U. S., 342, 379.
Roemer *vs.* Peddie, 132 U. S., 313, 317.

In the present case proof has been adduced to the effect that the "Pearl Chair" illustrated in the Heywood Bros. catalogue was manufactured by Mr. Chichester in 1877 (p. 37, Record), and by the complainants themselves under the Caulier patent (see Waite, pp. 34 and 35, and the Caulier Patent, p. 149, Record).

The Pearl chair, as actually made by Chichester and others prior to the Kenna invention, is in evidence as Chichester Chair No. 1 (Pearl Chair No. 1) and Chichester

Chair No. 2 (Pearl Chair No. 2) (see p. 37, Record), and has the following form :





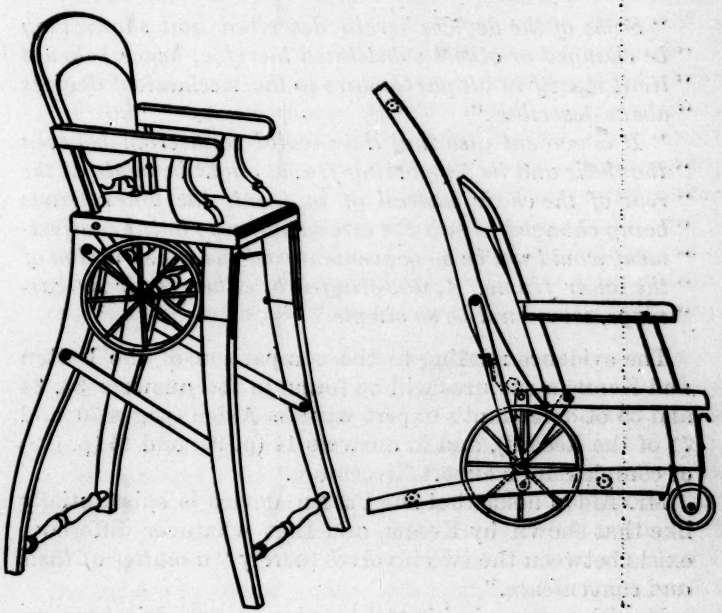
It therefore had, in addition to the elements *A*, *B* and *E*, also a spring catch *F*. This spring catch was placed so as to prevent the bail going further forward, whereas in the Kenna patent the spring catch has no such function. But as the spring catch of the Pearl chair is like the spring catch in the Chichester patents, pages 143 and 145 (see Opinion, p. 127), it follows that the catch of the Pearl chair must by the complainant be admitted to be like his "yielding rest or support, *F*."

The complainant's patentee having admitted by his amendment cancelling the October 25th claim that the Pearl chair contains equivalents for his combination of parts *A B E*, is no longer in position to claim, now that it appears that the *same* Pearl chair also had the spring catch *F*, that he, Kenna, was the first inventor of the combination *A B E F*.

The state of the art as disclosed in the Record also shows the prior existence of the Caulier patent (p. 149), which shows a chair frame, hinged in front to a lower supporting frame in which there is a pivoted bail or handle *N*, and a

fastener or lock *H*, the latter serving to hold the parts safely in their proper relations when the chair is elevated, and also when it is lowered. It is true that the bail or handle *N* of the Caulier patent does not assist in holding the chair body up, as does the bail or handle of the Kenna patent. But the "Pearl chair heretofore discussed was manufactured by Chichester under the Caulier patent (p. 38), and had the bail elongated to help sustain the chair body, all before Kenna's alleged invention, so that Kenna was not the originator of the idea of utilizing the bail or handle as a support for the elevated chair seat.

The Record also contains reference to the prior Patten patent (p. 151), which illustrates (stripped of devices not relevant to this issue) the following structure:



It will be seen that in this Patten patent there is an upper chair frame, having two sets of wheels, a lower supporting

frame, part of which is the bail or handle and a front lock, which in the raised position of the chair, fastens the chair body to the lower frame. In the lowered position the bail constitutes the push-handle.

This Patten device differs from the Kenna structure (for the purpose of the 2d claim of the latter) only in the fact that the bail or push-handle in the Kenna device is hinged to the lower supporting frame at its lower end, while in the Patten structure the bail is hinged to the chair at its *upper* end. In our opinion this is not a patentable difference, or if it is, is not pointed out in the second claim of the Kenna patent. In fact the Kenna patent provides rather for such a construction of its second claim, as would include Mr. Patten's device.

Thus the Kenna specification says (p. 143):

"*Some of the devices herein described and shown may "be changed or others substituted therefor; hence I do not "limit myself in all particulars to the mechanical devices "above described.*"

"*It is evident also that the pivotal connection between "the chair and its supporting-frame might be made at the "rear of the chair instead of in front, the lower frame "being changed to suit the circumstances; but the adjust- "ment would not be so convenient and the construction of "the lower frame, A, adapting it to either chair or car- "riage, would not be so simple.*"

The evidence relating to the comparison of the Patten and Kenna structures will be found in the answers 33, 34 and 35 of defendant's expert witness Alden (pages 70 and 71 of the Record), and in answers 11 (p. 90) and 16 (p. 108) of complainant's expert Livermore.

Mr. Alden holds that the Patten device is substantially like that shown by Kenna, and that whatever difference exists between the two involves merely "*a matter of taste and convenience.*"

Mr. Livermore, in his 11th answer (p. 90) claims, as we think, contrary to the fact that the Patten structure "*does "not in any way suggest that a rigid supporting frame,*

" *shortened and hinged to the front legs of the chair, could* " *be got out of the way by turning it quarter around, so* " *as to make a compact and durable low chair of good ap-* " *pearance.*"

We submit that a comparison of Figs. 3 and 4 with Fig. 1 of the Patten patent drawing, shows Mr. Livermore to be in error.

In his 16th answer (p. 108), Mr. Livermore testifies as follows:

" *Int.* 16. *Please read Mr. Alden's* 33*d*, 34*th and* 35*th* " *interrogatories and answers, and state how far you* " *agree with* OR DIFFER *from him?*

"Ans. *I* AGREE *with answer to Int.* 33 *that the front part* " *of the Patten chair frame is substantially like the* " *front part of the Kenna chair frame, and that the* " *hinging of a chair frame to a supporting frame at a* " *point below the chair seat was not new after Patten.* I " ALSO AGREE *in substance with answer to Int.* 34, *that the* " *Patten chair, when used as a carriage, is supported on* " *four wheels, substantially like the Kenna chair,* AND I " SHOULD ALSO AGREE *with answer to interrogatory* 35, " *that the mere choice of the point or distance at which the* " *hinge is located with relation to the chair seat, was a* " *matter of taste, so long as this change of location could* " *be made without substantial change in the construction,* " *relations and mode of operation of the other parts.*"

The record does not, we believe, contain any other or further reference to the Patten patent, and we therefore submit that the proofs show it to be a fair anticipation of the second claim of complainants' patent in suit.

We also refer the Court to the former patent of F. Chichester, No. 217,341 (p. 147), which shows a raised chair with four rollers or wheels, a lower supporting frame, part of which is a bail or support that forms a push-handle for the lowered position, and a locking notch for keeping the parts properly related when elevated. This Chichester patent, 217,341, was cited by the Examiner of the Patent Office as a reference to the original 6th claim of Kenna's

application (pp. 135, 136), and led to the abandonment of that claim.

Other anticipating patents are in the record and are mentioned by the experts, but the Court will find that those referred to bear the closest relation to the matter at issue. The others mainly show that convertible child's chairs and carriages were old, prior to Kenna's appearance on the stage.

A rather unfortunate effort is made on the part of complainants to carry Kenna's date of invention back of these older devices. On this subject the Court below in its opinion said (p. 127):

"*Upon the evidence the plaintiffs contend that the Kenna "invention antedates the Pearl chair, but I find the con-"trary to be the fact.*"

This finding was necessary, in view of Kenna's action when his 3d claim was rejected on the Pearl chair (p. 9, this brief).

A review of the testimony of the patentee Kenna (p. 90), of Mr. Vanderploeg (p. 103), Hitchcock (p. 124), Hoffman (p. 125), and Stevens (see p. 22), will further satisfy the Court of the correctness of this finding. It appears from Hitchcock that the complete Kenna chair was not made before the fall of 1880, and even this did not have the slotted bars of the Kenna Patent, and without which Kenna admits the chair to be inoperative (Ans. 74–76, pp. 101–102), as we will more fully show later on; and that, in fact, ONLY ONE CHAIR WAS EVER MADE UNDER THE KENNA PATENT. On this subject Mr. Stevens testifies as follows: (p. 23):

"x-Q. 62. *Did you ever see or have knowledge that a "full-size chair was ever made which correctly represents "in all the parts the chair shown and described in the "Kenna patent in suit?*

"Ans. *I have.*

"x-Q. 63. *How many such chairs?*

"Ans. *One.*

"x-Q. 64. *Where is that chair?*

"Ans. *I think that it is at Baldwinsville.*

" x-Q. 65. *How long since you have seen it ?*

" Ans. *It was about six weeks ago.*

" x-Q. 66. *In whose possession was that chair at the* " *time ?*

" Ans. *Thompson, Perley & Waite.*

" x-Q. 67. *Do you know when and where that chair was* " *made ?*

" Ans. *It was made at their shop about that time. It* " *was prepared as an exhibit, but it hasn't been brought.*"

We have, therefore, shown that Kenna was not the first inventor of a convertible chair and carriage; was not the first inventor of a combination composed of a chair body, pivoted in front to a lower supporting frame, with a pivoted bail and push-handle and with a spring lock or fastener.

Hence complainants are not entitled to maintain the second claim of said Kenna Patent as a valid claim.

(*b.*) *As to Operativeness.*—The Kenna patent, so far as it describes the four elements of the second claim, does not produce an operative chair. These four elements will not prevent the chair from tilting on its pivot and from spilling the child out. To render the structure complete the patentee has added certain slotted bars to the sides of the lower frame, which slide on pins of the chair body and keep it from tilting forward. The lower parts of these slotted bars are connected to the lower or main frame by pins that also serve as stops for the upright bail or handle, preventing it from going too far forward and from letting the chair tilt *backwards.*

This will be readily understood from the certified Patent Office model of the Kenna patent, which is in evidence.

Remove from that model the slotted bars—which can be easily done with the aid of a screw driver, and you have a useless remainder.

KENNA, himself, the patentee, as a witness, says (p. 102):

" Cross-Q. 76. *If the slotted bars were taken off of De-* " *fendants' Exhibit Kenna Patented Chair, would not the* " *chair seat tip over and the bail fall down in any at-* " *tempt to use it when in an elevated position?*

"Ans. THAT CHAIR IS LIABLE TO TIP EITHER WAY, THE "WAY IT IS CONSTRUCTED NOW, IF YOU HAD THE SLOTTED "BARS OFF."

Mr. Livermore, the complainants' expert witness, testifies on the same subject, in answer 67, p. 123, as follows:

"Int. 67. *As to the stop for preventing the bail from "moving too far forward and the stop for preventing "the chair frame from turning too far forward on the "axis, which connects it to the shortened main frame, "please state whether these two stops are essential or not, "and whether they are found or not in the various ex- "hibits which in your opinion embody the Kenna inven- "tion"?*

"A. IN MY OPINION BOTH THESE STOPS ARE ESSENTIAL, "*and are found in all the exhibits which in my opinion "embody the Kenna invention.*"

Now in the Kenna patent these two "essential stops" are the slotted bars *G* and the pins *H*, both of which are elements of the *first* claim of the patent. But they are not elements of and cannot be read into the second claim. Without them, however, that which the second claim seeks to cover is admittedly inoperative.

As this suit is based only on the second claim (see Opinion, p. 126, and Interlocutory Decree, p. 8), it follows that the subject matter of the said second claim is for an inoperative combination.

A combination of parts cannot be regarded as patentable, unless, without addition, it produces an operative and useful structure.

Robinson on Patents, § 153.
Harles *vs.* Van Wormer, 20 Wallace, 353, 368.
Pickering *vs.* McCullough, 104 U. S., 310, 317.
See also Testimony of Alden, p. 73, Record.

2. Do defendants infringe?

This question is covered by the 2d and 3d exceptions.

The Court below treated the two defendants' chairs,

marked Exhibits Defendants' Chairs 1 and 2, as being substantially like those shown in the Chichester Patent No. 259,368, and 260,843, pages 143 and 145, Record, for it says in its opinion (p. 127):

> " *The first of these alleged infringing chairs is found de-*
> " *scribed in the Chichester Patent No.* 259,368, *dated June*
> " 13, 1882, *the second in the Chichester Patent* 260,843,
> " *dated July* 11, 1882."

As to the other defendant's chairs which were marked Exhibits A and B, and which were first produced before the Master, the Court below said (p. 128):

> " *The only question raised on the exceptions to*
> " *the Master's report is whether there is found in*
> " *Defendants' Exhibits A and B the yielding rest or*
> " *support F of the Kenna patent or its equivalent.*
> " *In my opinion* THE SPRING PRESSURE *which holds*
> " *the bail securely under the chair seat in Exhibits*
> " *A and B* IS THE EQUIVALENT OF THE YIELDING REST
> " *or support shown in the Kenna patent.*"

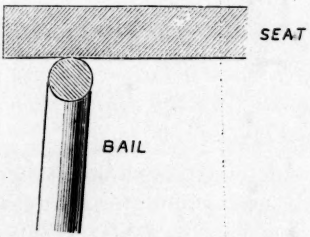
In each of the four chairs of defendant's manufacture, which have been held to be infringements of the 2d claim of the Kenna patent, the chair frame, having four wheels, is hinged to the lower supporting frame, the hinge connection being a stop or but-joint, like the hinge-joint of the Patten patent, and not a free pivotal connection like that of the Kenna patent.

Hence the upper chair frame in defendant's structure *can never* swing forward and spill the child out forwardly, as will the Kenna structure without the slotted bars *G* and pins *H*.

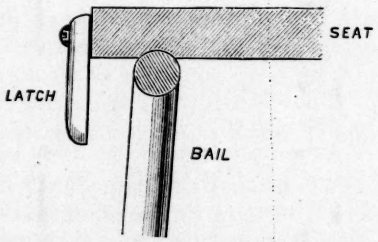
The bail in the defendant's four chairs is at its lower end pivoted in the lower supporting frame exactly as in the *Pearl* chairs, and folds when elevated directly under the chair seat, the same as in the *Pearl* chairs, instead of folding beneath a yielding cross-bar *f* placed at a distance below the seat as shown and claimed in the Kenna Patent.

See Alden Ans. 2, p. 119, Record.

A yielding rest or support is however not to be found in the defendant's four chairs. In Exhibits *A and B* the bail simply enters under the seat, thus:

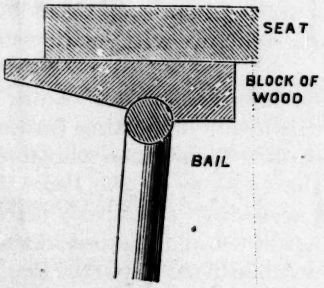


In Exhibit No. 1 it enters a groove under the chair seat, thus:



a small pivoted latch as in the above sketch, serving as a safety stop to prevent the bail going backwards.

In Exhibit No. 2 the bail enters under a grooved wooden block which is secured to the seat, thus:



Do we in any of the above structures find Kenna's yielding rest or support F?

We should think not. It is clear that in Judge Colt's opinion the groove in the seat of Exhibit No. 1, or in the block of Exhibit No. 2, plays no part in determining the question of yielding rest or support. In his opinion (p. 128) respecting Exhibits A and B, he plainly states that when the bail swings under a plain seat, the *spring* of the bail is the *equivalent* of the yielding rest or support of the Kenna patent.

But the Court below has overlooked the fact that Mr. Kenna, by abandoning his original second claim and his amended third claim of October 25, 1879 (see pages 8 and 9 of this brief), admitted that he was *not* the first inventor of the combination of the supporting frame *A*, chair frame *B* pivoted thereto, and curved supporting bail *E*. If the defendants use the combination of those three elements it will never do for Kenna or his assigns to discover that one of these three elements possesses an elastic virtue (namely, the bail) which renders the fourth element needless.

One who is limited to the combination of four elements cannot cover the combination of three only of said four elements on the plea that one of these three has the function and virtue of the omitted fourth.

Moreover, the old *Pearl* chairs possessed in their bails the identical elastic virtue which is now said to be found in the bail of defendants' chairs and to be the equivalent of the yielding rest or support *F* of Kenna's patent.

As the Pearl chair, by amendment of December 17, 1879, was admitted by Kenna to contain the equivalents of Kenna's chair frame, chair body and bail (see page 9, this brief) and as the elastic property of the bail is by Judge Colt held to be the equivalent of Kenna's yielding rest or support *F*, it follows that the Pearl chair, under Judge Colt's construction, precludes the patentee Kenna from claiming that defendants' chairs contain that which he, Kenna, has invented.

Again, as the Patten patent shows the combination in

question, as heretofore explained, it likewise follows that defendants do not infringe any valid claim of Kenna's patent.

It is of interest here also to note that the only chair made by complainants avowedly under the patent in suit, to wit: "Complainants' Exhibit Complainants' Kenna Chair," has the wheels on the supporting frame and *not* on the upper chair frame, and has *no* yielding rest or support.

See the testimony of complainant Waite, pages 30, 31, and particularly on pages 32 and 33 of the Record.

In answers 77 and 84, page 32, Mr. Waite admits that complainants' chair has no spring catch or spring support *F*, and afterwards on redirect-examination, answer 114, *et seq.* (p. 35), he asserts that the *hook* in his so-called Kenna chair is the equivalent of the spring "support," admitting at once, however, that the hook is not a support.

Hence, as defendants have *no* hook even, in three of their alleged infringing structures, they would not infringe the Kenna patent under Mr. Waite's view. While under Judge Colt's opinion, if the hook were taken off Complainants' Exhibit Complainants' Kenna Chair the equivalent of the Kenna yielding rest or support would nevertheless be found in said structure. This shows that the opinion of the Court below is opposed to the evidence in the case.

We also beg to call attention to Mr. Waite's, the complainant's, answer to cross-question 89, page 33, which is as follows:

"Cross-Int. 89: *Referring to the chair described in the "Kenna patent upon which this suit is brought, did you "ever see a full-sized chair made in accordance with the "chair represented in the drawings and described in the "specifications of that patent?*

"A. *I could not say that I ever did.*"

Contrast this with the assertion, top of page 2 of Complainant's Bill of Complaint.

The defendants justified their manufacture under the Chichester patents of 1882 (Section VI., Answer, pp. 4 and 5), and proved by Mr. Chichester that after these same complainants had induced him in October, 1878, under cover of a certain reissue to stop making the *Pearl* chair (pp. 37 and 41, Record), he at once started to make the chairs now complained of, beginning their actual manufacture in the summer of 1879.

It would appear, unless there is a clear infringement of a clearly valid patent, to be inequitable to enjoin parties thus openly and fairly in market, at the request of patentees who never were able to, and certainly never did work under their own patent, on a bill filed nearly *seven* years after the so-called infringement had been begun.

3. As to costs.

Objection was made before the taxing clerk against his allowance of mileage to the witness Stevens of 586 miles, to the witness Kenna 1,358 miles, the witness Vanderploeg 1,108 miles, and the witness Reed 1,108 miles (see p. 13, Record). These objections were overruled by the clerk and on appeal by the Court (p. 13).

Stevens resides in New Bridge, New Jersey. He was examined as a witness on August 25 and August 26, 1886 (pp. 14 and 22), and again in rebuttal on November 18th (p. 123). New Bridge, we assume, is 293 miles from Boston, where the examination took place.

Kenna resides in La Grange, Illinois, which is, say 1,358 miles from Boston. For his testimony the complainants received a mileage fee of $135.80. His testimony will be found on page 90.

For *Vanderploeg's* trip from Chicago to Boston and back one hundred and ten dollars and eighty cents were allowed to the complainants, likewise a like sum for Mr. *Reed's* trip in the same directions.

The evidence of these expensive witnesses will be found on pages 103 and 104 of the Record.

We think that these witnesses could have been examined at less expense under § 863 of the Revised Statutes,

de bene esse. They could not have been forced by subpœna to travel over one hundred miles (§ 876). Hence they traveled as volunteers.

Spaulding *vs.* Tucker, 2 Sawyer, 50.

Congress never can have intended to make such a voluntary trip exceedingly profitable. It costs very much less than one hundred and ten dollars to travel from Chicago to Boston and back.

If the Court below was correct in its taxation, litigation will become onerous indeed.

The authorities on this subject are conflicting. This appears from the exhaustive review of *Mr. Justice Gray* in United States *vs.* Sanborn, 28 Federal Reporter, 299, which shows to what extent former authorities differed, and which laid down the rule in this case for the taxing clerk.

In the face of U. S. *vs.* Sanborn, the opinion of Judge Sawyer in Haines *vs.* McLaughlin was rendered, 29 Fed. Rep., 70. In this opinion Judge Sawyer says:

"*In U. S.* v. *Sanborn the Court seems to attach some* "*importance to the fact that the rule adopted had long* "*prevailed in that circuit, whatever the case might have* "*been in other circuits. But the case is governed by the* "*same statute which is applicable to all the circuits.* "*Whichever rule is the proper one should, therefore, be* "*followed in all the circuits, and it is highly important* "*that the point should be authoritatively settled by a de-* "*cision of the Supreme Court. With the utmost respect* "*for those taking the other view, I shall, for the present,* "*adhere to the rule heretofore established in this circuit,* "*and my associate, for the purposes of this case, will* "*adopt the view of Mr. Justice Gray. If desired, a cer-* "*tificate of opposition of opinion will be made, and it is* "*to be hoped that the case will be taken up for an authori-* "*tative decision.*"

"*I will venture to make an additional observation in* "*support of the rule, apparently adopted in the Second,* "*Sixth and Ninth Circuits. The true rule rests upon the*

*"proper construction of the statute. Section 823 says, in "plain, unequivocal terms: 'The following, and no other, "compensation shall be taxed and allowed to * * * "witnesses * * * in the several States and Territories, "except in cases otherwise expressly provided by law.' "The provision is expressly prohibitory, and 'no other "compensation' can be taxed and allowed than such as is "clearly 'expressly provided.' The only express provision "of which I am aware, applicable to the case, is that found "in Section 848, which reads: 'For each day's attendance "in court * * * pursuant to law * * * one dollar "and fifty cents, and five cents a mile for going from his "place of residence to the place of trial or hearing and "five cents a mile for returning.' Do the words 'pur-"suant to law' mean anything? Do they add any-"thing—any qualification or limitation—to the provision? "And, if so, what? And if not, why were they so carefully "introduced into the statute? It is one of the best-settled "canons of statutory construction, that some force must, "if possible, be given to every phrase and word of a stat-"ute. Does not 'pursuant to law' mean 'upon the re-"quirement of, or in obedience to, the law?' 'to attend "under the obligatory requirements, or pursuant to the "commands, of the law?'? Is this a strained or unnatural "construction? If this be not the meaning of the phrase, "then what meaning can be attributed to it that will in "any possible degree add to, qualify, or limit the mean-"ing of the other language used? Rejecting this construc-"tion, if some other rational, qualifying meaning that the "words will reasonably bear cannot be suggested, then it "must be conceded, I think, that the phrase 'pursuant "to law' does not mean anything; and it will thus be "stricken from the statute by judicial construction, in vio-"lation of the canon of statutory construction cited.*

"The law has fixed the limit to which a subpœna can "run, and it has provided other and less expensive "means for obtaining the testimony of witnesses residing "beyond the jurisdiction of the Court to send its subpœna. "If parties can tax the traveling fees of witnesses who come

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JAMES H. McKENNEY,

RECORD, CASE No. 13,562.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No. 362.

PHILANDER DERBY, ARTHUR P. DERBY, GEORGE HODGMAN, AND GEORGE W. CANN, APPELLANTS,

vs.

DANIEL L. THOMPSON, CHARLES A. PERLEY, AND GILMAN WAITE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR APPELLEES.

J. E. MAYNADIER,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 362.

PHILANDER DERBY ET AL., APPELLANTS,

v.

DANIEL L. THOMPSON, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR APPELLEES.

STATEMENT.

THIS IS A BILL IN EQUITY FOR INJUNCTION, AN ACCOUNTING FOR GAINS AND PROFITS, AND FOR ASSESSMENT OF DAMAGES, BROUGHT FOR ALLEGED INFRINGEMENT OF UNITED STATES LETTERS PATENT No. 224,293, GRANTED FEBRUARY 24, 1880, TO JOSEPH W. KENNA, FOR IMPROVEMENT IN CHAIRS.

Appellants were defendants below.

Only the second claim of the patent is in suit.

Exhibits Defendants' Chairs 1 and 2 were held by the court below to infringe this second claim; and on exceptions to the master's report, the court below also held Defendants' Exhibits A and B as infringements of this claim.

FIRST AND SECOND ERRORS ASSIGNED.

The first error assigned is that the court below erred in sustaining the second claim of the patent in suit.

The claim is as follows:

"2. The frame A, in combination with the bail E, chair frame B pivoted at its lower front corners to the frame A, and the yielding rest or support F, substantially as described."

Appellees contend that this is a claim for the combination of four elements; that two of the elements are: 1st, a chair frame which is substantially a low chair, and, 2d, a frame having four legs and adapted to go under the low chair in order to make it a high chair and to fold out of the way when the low chair is used. The 3d and 4th elements of the combination are, a bail or supplemental frame which forms part of the rear legs of the high chair, and a catch or fastening device which keeps this bail or supplemental frame in place when the chair is used as a high chair.

In brief, the combination claimed is the combination of three frames, marked A, B, and E, and the lock, marked F, including, of course, all equivalents of each element.

The infringing chairs are Exhibits Defendants' Chair 1, Defendants' Chair 2, Defendants' Exhibit A, and Defendants' Exhibit B, and it seems obvious on inspection that each of them has the frame A and the frame B and the frame E, and a locking device. The complainants submit that all these chairs are fairly within the second claim of the Kenna patent in suit.

Defendants' Chair 1 is shown in the Chichester Patent No. 259,368, dated June 13, 1882. In that patent it seems clear that the frame composed of four legs, marked G H, and their connecting rounds, is the same as the frame A of the Kenna patent; that the low chair composed of the frame marked F A B D, and the wheels E C, is the same as the frame B of the Kenna patent, which frame B in the Kenna patent is shown as made up of four legs properly connected to

form the "base frame *b*" and the seat *b'* supported by those four legs and wheels L. The bail I of patent No. 259,368 is obviously the same as the bail E of the Kenna patent; and the catch *b*, it is submitted, is the same as the part F of the Kenna patent. That part F is called by three names in the Kenna patent: "a spring catch" on line 55, p. 1, of the printed specification; "the yielding rest;" and also "the support."

The chief defence urged by the defendants on the question of infringement seems to be that this spring catch marked *b* in Chichester patent No. 259,368 is not the same in substance as the spring catch F of the Kenna patent. This was argued at some length by defendants' experts Parker and Alden, but it is submitted that the catch *b* as described in the Chichester patent is manifestly the same as the catch F of the Kenna patent. Lines 40–45 Chichester patent: "The push handle I is then turned nearly vertical and secured beneath the seat frame at its rear by a catch *b*, the push handle when in this position forming the upper continuation of the back legs." Lines 53–57 of the first page of the Kenna patent: "A bail E is hinged to the lower rear corner of the frame A and swings forward under a spring catch F, on a rod *f*, at the lower rear corner of the chair frame, to support the chair at the rear."

Is it not manifest that the bail I and catch *b* in the Chichester patent No. 259,368 are copies of the bail E and catch F of the Kenna patent?

In the Chichester patent No. 260,843, dated July 11, 1882, the frame composed of the four legs I J and their cross connections is manifestly the same as the frame A of the Kenna patent; and the frame A B C D E F and the wheels G H of the Chichester patent No. 260,843 the same as the chair frame B of the Kenna patent; and the bail K and catch *f* are the same as the bail E and catch F of the Kenna patent. This Chichester patent No. 260,843 describes Exhibit Defendants' Chair 2.

It is submitted that it is abundantly clear that the patentee

intended to make a claim for the combination of a chair and its supporting frame, by means of a supplemental frame connected substantially as shown in the patent; that is to say, by a hinge at its lower end and a catch of some sort at its upper end, or by a hinge at its upper end and a catch of some sort at its lower end; by that particular form of catch shown in the drawings, or by any other catch substantially the same, or by any catch which was a known equivalent; the only essential thing being that the supplemental frame must be so connected to the parts as to support the chair at the rear when used as a high chair and to fold out of the way when used as a low chair or carriage.

It is obvious, for example, that the wheels may be omitted; and it is also entirely clear that if the wheels be omitted, the function of the bail E as a push handle disappears.

The patentee states:

"My invention relates to an article of furniture which by the simple adjustment of the several parts may be converted from a nursery chair to a child's carriage and *vice versa*, so that it may be used for either a child's high-chair or a carriage as may be desired.

"The invention consists in the manner of connecting the chair to its supporting frame and supporting it therein."

This last statement is especially urged upon the court, for it is believed to be perhaps the best possible way of stating the real invention; that is to say, the combination of a chair — meaning a low chair — and a supporting frame, substantially in the manner described, whereby the chair can be readily changed from a high chair to a low chair, or carriage when it has wheels.

This expression, "connecting the chair to its supporting frame and supporting it therein," is relied upon as showing that the element B of the combination is the chair, and the element A the supporting frame, and the other two elements, E and F, the manner or means of connecting the chair B to its supporting frame A, and supporting it therein.

After stating that "the chair frame B is of any ordinary construction," the patentee says, "this chair frame is attached to the upper front portion of the frame A by a hinged joint," "so that the chair is pivoted to its supporting frame at its lower front corner."

The bail E is said "to support the chair at the rear when in an elevated position," and is also called "the supporting bail." No mention whatever is made of the part F, except in the second claim and in line 55 of the first page of the specification, where it is said that the bail E "swings forward under a spring catch F."

It is submitted with great confidence that it is abundantly clear that the patentee thought that the material part of his invention was the combination of a chair and a supporting frame hinged together at the upper corner of the supporting frame and the lower corner of the chair, the combination of these two elements by means of a supporting bail or frame and the catch so arranged that the supporting bail or frame could be readily secured in place when the device was to be used as a high chair, and sufficiently detached to allow the supporting frame to be turned quarter round in order to make the chair a low chair.

It is significant that the defendants themselves substantially admitted to Mr. Waite — one of the complainants — that their Chairs 1 and 2 infringed the patent, and would probably have settled without suit for chairs of that kind, but for the fact that they hoped the changes which they had made in Defendants' Chair 3 (held by the court below not to infringe) would evade the Kenna patent.

Waite's Dep. Ints. 6–10, pp. 25 and 26.

The experts Parker and Alden for the defendants seem to take a peculiar view of the support F. What Parker means is not clear. See ints. 23–24, p. 52, and int. 36, p. 54; also int. 74, pp. 59 and 60.

Mr. Alden sets out in his 31st answer (p. 69 *et seq.*) his view of the second claim, and his argument seems to be that the second claim must be construed narrowly. He says it "must virtually include the slotted bars," and also that the second claim must be narrowed by a peculiar interpretation of the word "yielding." He argues that "this element F must be a suitable support for the chair frame, and not simply a spring catch." It is submitted that his argument has so little force that it is enough to say that the only mention of the element F in the specification of the Kenna patent is on line 55 of the first page in the following paragraph: "A bail E is hinged to the lower rear corner of the frame A and swings forward under a spring catch F, on a rod *f*, at the lower rear corner of the chair frame, to support the chair at the rear when in an elevated position."

Mr. Alden seems seriously to contend that the spring catch F is intended "to support the chair at the rear when in an elevated position;" but it seems obvious that he is clearly wrong, for it seems manifest that it is the bail E which is "to support the chair," etc.

Mr. Alden also argues on p. 70 that the action of the Patent Office and the acquiescence of the applicant in the action of the office necessitate a narrow construction of the second claim. *It is submitted that this argument has no force*, FOR THE REASON THAT THE ORIGINAL 7TH CLAIM IS THE PRESENT SECOND CLAIM, AND NEVER WAS REJECTED OR AMENDED.

It is submitted that there is nothing in the File Wrapper and Contents which tends to show any admission on the part of the patentee that he was not the original and first inventor of the combination of the chair frame, the supporting frame, the supplemental frame, and a catch or fastening; but that, in spite of the argument of Mr. Alden, the proceedings before the Patent Office show conclusively that the patentee asserted from the start that that was his invention, and that the Patent Office never denied that he was the original and first inventor of that

combination. Mr. Alden seems to have abandoned his argument as untenable in his second deposition, pp. 118–121, and takes a new position, in substance that he thinks the "yielding rest or support F" should read "yielding rest or support *f*." This argument as submitted is even weaker than his first one.

STATE OF THE ART.

The Caulier patent, No. 202,788, and Defendants' Exhibit Model of the Caulier Chair.

It is plain on inspection that the chair B of Kenna's patent is not present in the Caulier patent, for the reason that the chair frame of the Caulier patent lacks both the hind legs, and that the equivalents for the front legs are not hinged to a supporting frame. It is also manifest that the supporting frame of the Caulier patent is different from the supporting frame of the Kenna patent, and that it is (by itself and without the aid of any supplemental frame) the supporting frame of the chair. It is also manifest that there is nothing whatever in the Caulier patent which in any way resembles the supplemental frame E of the Kenna chair. There are two spring catches in the Caulier patent, either no doubt the equivalent of the spring catch F of the Kenna patent, but they connect the seat frame of the chair to the rear legs of the chair, and of course have nothing whatever to do with the supplemental frame, because there is no supplemental frame in the Caulier patent. It is probable that the Caulier chair is not urged seriously. Alden, ints. 11–15, pp. 77–79.

The Harris & Childs patent, No. 137,610, dated April 8, 1873. It is radically unlike the Kenna chair. The supporting frame of the high chair constitutes the rockers and the arms of the low chair.

The Gleason patent, No. 215,601, date May 20, 1879. Here the chair frame has the equivalents of rear legs in the two bow-springs and wheels, which serve as rear legs when the

chair is used as a low chair or carriage, but the supporting frame E is manifestly unlike the supporting frame of the Kenna chair.

This Gleason patent, it is submitted, tends strongly to show that the Kenna chair is an invention, and not the work of a mere constructor.

Here are two men, Gleason and Kenna, both presumably skilled workmen, both seeking to accomplish the same result, and both at work about the same time; for Kenna filed his application July 28, 1879, and Gleason filed his March 28, 1879. The plans of the two men are radically different, for Kenna's plan is to connect an ordinary chair, that is, a seat and four legs, to a supporting frame, while Gleason's plan is to leave off the front legs of an ordinary chair, and to use a supporting frame which is so high and otherwise so constructed that it requires to be wholly disconnected from the seat frame of the chair, thrown out forward and re-connected to form a low chair.

It is submitted that this radical difference in the two plans goes far to show that the Kenna plan is an invention, and not the product of mere skill.

The F. Chichester's patent, No. 217,341, dated July 8, 1879. Here also the patentee was attempting to accomplish nearly the same result that Kenna and Gleason sought to accomplish. Chichester started with a complete low-chair just as Kenna did, but his plan is nevertheless radically unlike Kenna's, for he makes a supporting frame of two cross-pieces and a horizontal piece slotted in a peculiar way. His plan is radically unlike Kenna's.

Patten's patent, No. 207,621, dated Sept. 3, 1878. Patten has still another plan for accomplishing the same general object. While he may be said to have a chair with four legs and to be therein like Kenna, it is yet submitted that his contrivance is radically unlike Kenna's in all respects, for the rear legs of Patten's chair consist of two pairs of links or swinging braces

H H′, and these links are connected in a peculiar way to the long rear-legs of the high chair so as to bring the hind wheels, forming part of the rear legs, out of place when the chair is used as a high chair, and into place when it is converted into a low chair. There is, in fact, no resemblance between Patten's plan and Kenna's plan, for the supporting frame B B′ G G of Patten is radically unlike the supporting frame A of Kenna, and the chair B of Kenna is radically unlike the chair A *b* H H′ and wheels C of Patten. Patten shows a joint, *a*, connecting the front legs, *b*, of a chair with the front legs, B, of a supporting frame, which joint is the same as the pivot rod D of Kenna; but inasmuch as the entire plan of the patent chair is radically unlike the plan of the Kenna chair, that is to say, the chairs are wholly unlike in construction and mode of operation, it seems too clear to need further argument that this single resemblance in this detail does not even tend to show that either borrowed anything from the other.

Swain's patent, No. 217,652, dated July 15, 1879. This plan is radically unlike Kenna's, for the chair proper lacks all four legs, and the supporting frame is a crossing frame, the upper ends of the crossing pieces being hinged directly to the seat.

French & Hunting's patent, No. 188,120, dated March 6, 1877.

Here the chair proper has no front legs; has a pair of links for the rear legs; the supporting frame is much like Kenna's, except that it is a good deal higher; but nevertheless it seems too plain to require argument that the plan is radically unlike Kenna's plan.

The Barnes patent, No. 213,610, dated March 25, 1879. Here the chair proper is a complete chair like Kenna's; but the plan is to place the chair proper directly upon the supporting frame to make a high chair, and disconnect the supporting frame entrely from the chair proper, and set the supporting frame to one side to make a low chair.

This patent shows the bail E and the spring catch F of Kenna's patent, and also shows a chair proper, not differing substantially from the element B of Kenna's combination; moreover, it shows a supporting frame in combination with these three elements; in fact, we have here four elements which may be said, in a certain sense, to be substantially the equivalents of the four elements A, B, E, and F of the Kenna patent; but it seems manifest, nevertheless, on inspection, that the combination of the Kenna patent is radically unlike that of the Barnes patent; for the plan of the Barnes chair has scarcely anything in common with the plan of the Kenna chair; and the construction and mode of operation of the Barnes chair are entirely different from the construction and mode of operation of the Kenna chair. As to the result, speaking generally, the results are the same; but speaking of the direct result and not the remote result, they are wholly unlike, for the result in Barnes is the putting together of two separate parts to make a high chair and completely separating these parts to make a low chair; while the result in Kenna's is turning one part ninety degrees on an axis, and adjusting the third part to make a high chair, and turning the supporting frame back out of the way to make a low chair.

Stevens patent, No. 220,258, dated October 7, 1879.

In this chair the chair proper has front legs, but no rear legs, and the seat is supported upon the upper ends of the supporting frame when the chair is a high chair, but is telescoped into the supporting frame when the chair is a low chair, and the plan is wholly different from that of Kenna; Stevens' chair being manifestly radically unlike the Kenna chair in construction and mode of operation; differing, in fact, in every particular except that both are adapted to be used as high chairs or as low chairs or carriages.

These patents are all that are referred to as anticipating the Kenna patent except No. 141,918 to Carpenter, dated August 19, 1873, which apparently has nothing whatever to do with

the case; and it is manifest that neither of these patents anticipates at all what the complainants allege to be Kenna's invention, that is a chair (meaning the element B of Kenna's second claim) or a seat and its four legs, in combination with a supporting frame (the element A of Kenna's second claim), and a supplemental frame (the element B of Kenna's second claim), and a spring catch, or fastening, F.

Of course to defeat this combination the appellants must show substantially the same elements combined in substantially the same way, or in other words substantially the same construction having substantially the same mode of operation. It seems too clear for argument that neither of these alleged anticipating patents even tends to show anticipation of the Kenna invention thus defined.

It seems likely that the appellants do not rely upon either of these patents so much as they do upon the Pearl chair, so called. This Pearl chair has, no doubt, the bail E and the spring catch F of Kenna's patent, but the complainants submit that it entirely lacks the chair B and the supporting frame A of the Kenna patent. As to the chair B, the Pearl chair proper consists of a seat and front legs, but no rear legs, and the supporting frame is long enough to be hinged directly to the seat, instead of being hinged to the front legs as it is in the Kenna chair.

Attention is prayed to these two differences; and it is submitted, first, that these two differences make the Pearl chair radically unlike the Kenna chair; secondly, that the plan of the Pearl chair is wholly different from the plan of the Kenna chair; thirdly, that there is nothing in the Pearl chair tending to show lack of invention in the Kenna chair.

When the Pearl chair is used as a high chair, it is substantially as good in all respects save one as the Kenna chair, viz.: the foot-rest of the Pearl chair is attached to the chair seat awkwardly, which is another way of saying that the Pearl chair proper has no front legs, unless the foot-rest and its con-

nections be regarded as the front legs, while the Kenna chair has four short legs, the element B of Kenna's patent being an ordinary chair; but when the Pearl chair and the Kenna chair, both used as high chairs, are compared, a marked difference will be seen in the front legs of the high chair, the front legs of the Pearl chair being each one long, rigid piece hinged to the chair seat, while the front legs of the Kenna high-chair are each two pieces hinged together, the upper and shorter pieces forming the front legs of the low chair.

Whether these differences between the Pearl chair and the Kenna chair are substantial or not is a mixed question of law and fact, to be determined by considering the construction, mode of operation, and the result of the two contrivances.

Compare now the Pearl and the Kenna chairs when altered to low chairs; it will then be seen that the foot-rest and its braces constitute the front legs of the Pearl low-chair, while the long front legs of the supporting frame constitute the rear legs of the Pearl low-chair, and that there is nothing in any way resembling this awkward, undesirable construction and operation in the Kenna chair.

It is submitted that this is sufficient to make it clear without further argument that the Kenna invention is not anticipated by the Pearl chair, assuming for the present that the Pearl chair is older than the Kenna.

The efforts by the appellants to show a likeness between the Pearl and Kenna chairs by an alteration of a chair like Exhibit Defendants' Chair 1 tends simply, it is submitted, to emphasize the differences which in fact exist between the Pearl and the Kenna chairs. Their theory seems to be that if that feature of the Patten patent which consists of a long pair of front legs, each made of two pieces hinged together with the shorter upper pieces rigidly attached to the chair frame, be incorporated in the Pearl chair, then the Kenna chair will be the result; but even if that were so, would it tend to show lack of invention in the man who conceived the happy idea of improving the Pearl

chair, by getting rid of its awkward supporting frame and putting in place of it a much better one not suggested in either the Pearl or the Patten chair?

Of course there are many ways of stating Kenna's invention, one of which, taken directly from his patent, is to say "the invention consists in the manner of connecting the chair [meaning the seat and four legs] to its supporting frame and supporting it therein;" but another equally fair way might be to say: the invention consists in that improvement over the Pearl chair by which the awkward, weak, and unsatisfactory construction and operation of the Pearl chair as a low chair is wholly remedied, and a strong, simple, compact, and durable construction substituted.

From this review of the state of the art the appellees submit with absolute confidence that Kenna is the first to conceive the plan of mounting a complete chair, that is a seat with four legs, upon a supporting frame, which could be turned on its axis through a quarter circle to bring it into use as a supporting frame, or get it out of the way when the chair is used as a low chair; and that this is manifestly an invention and has been servilely copied in all appellants' chairs.

DATE OF KENNA'S INVENTION.

Kenna swears that he made the model filed in the Patent Office with the application for his patent in the early part of the year 1877, and that that model was made by the model-maker from a rough model which he, Kenna, made in the winter of 1876, or early part of 1877, about New Year's. Interrogatory 9, pp. 91 and 92. A modified form of the Kenna chair shown in Complainants' Exhibit "Kenna Model 2" was made in the early part of 1877. Int. 11, p. 92. Kenna also swears that he made a full-size chair like that shown in his patent drawings in the early part of 1877. Cross-Int. 21, p. 93. Vanderploeg testifies that Kenna came to work at Ford,

Johnson & Co.'s about Thanksgiving, 1876, and he saw the Kenna chair sometime in 1877. Page 103. Reed corroborates Kenna and Vanderploeg, and from the whole testimony it is submitted that it is clear that Kenna commenced work in the latter part of 1876, and made a complete chair early in 1877. Int. 3, p. 104. But see stipulation, pages 124–125.

DATE OF THE PEARL CHAIR.

Lemuel A. Chichester swears that the Pearl chair was made in August, 1877 (Int. 5, p. 37), and that between fourteen hundred and fifteen hundred of them have been made. The manufacturing ceased in October, 1878. (Int. 10, p. 37.) The Pearl chairs were sold by Heywood Bros. & Co. He is corroborated by John Blythe and Edward P. Chichester.

It is submitted that Kenna's invention was made before August, 1877, when Chichester invented the Pearl chair.

The Chichesters attempted to testify that they invented the Kenna chair about October 30, 1878, but their testimony is very meagre; the principal witness, Lemuel A. Chichester, was fully examined and cross-examined without saying anything about it, and first spoke of it when he was recalled to give his second deposition. Ints. 3–8, page 41. His brother, Edward P. Chichester, says that he has a recollection at the time of the settlement (which was dated October 30, 1878), or very soon after talking with his brother, Lemuel A., about carriage chairs, and that Lemuel A. said "as we cannot make the Pearl chair any more, I have an idea of changing the chair by taking the wheels off from the roller carrying legs in front and putting them on the rear frame of the chair in some manner, and cutting the front legs in two at some distance below the seat and hinging it there; and as soon as he got time he was going to see what he could do with it. That is about as near as I can recollect it, to my best recollection." Int. 14, pp. 47 and 48.

It had previously appeared from the testimony of Lemuel A. Chichester (int. 11–13, pp. 37 and 38) that the Chichesters commenced manufacturing chairs like "Exhibit Defendants' Chair 1" in the summer of 1879, which must be held to mean, of course, after Kenna applied for his patent, which was July 28, 1879, and Kenna's chairs were in the market in 1878.

This is a weak effort on the part of the defendants to prove that Lemuel A. Chichester is the inventor of the Kenna chair, but it fails for two reasons: first, because of the vagueness and uncertainty of the testimony of Lemuel A. and Edward P. Chichester; and, second, because they are too late in their dates.

STAMPING PATENTED.

It appears that the chair marked "Exhibit Complainants' Chair" is not stamped. Mr. Waite at first thought that that chair was one of his manufacture, and Mr. Stevens thought not. (Int. 69, page 24.) And Mr. Waite (int. 14, p. 26) afterwards corrected his testimony; and Mr. Kenna (int. 59–60, pp. 99 and 100) showed that this was a chair made before the patent was issued, and that the chairs were always stamped while he was concerned in their manufacture. See also Waite's testimony, cross-int. 64, page 30, int. 67, pp. 30–31.

TESTIMONY OF THE EXPERTS.

Lemuel A. Chichester testified at first that the yielding rest or support F was in Complainants' Exhibit Model 3, and that that exhibit would be inoperative without it; but as this was contrary to the theory of the appellants' case, a leading question was put to him, and he said he was mistaken about it. Ints. 11–12, p. 42. He blundered repeatedly, so much as to take away all force from his testimony; for example, in cross-int. 17, p. 43, he testified that the supporting frame A of the Kenna patent supported the axles of the wheels; he then thought that

the slotted bars G supported one of the axles of the wheels; he then reasserted that the supporting frame A supported the axles of the wheels. Pages 43, 44, and 45. This is conclusive proof that he is wholly unfit to testify as an expert. After some cross-examination, however, is mind his somewhat enlightened, and he testifies that the bail and catch of the Pearl chair are substantially the same as the parts marked E and F in the Kenna patent, cross-int. 43–44, p. 46. No doubt he so testified because he thought that the Pearl chair was older than the Kenna chair, and he supposed, therefore, that he was swearing against the Kenna patent; but as what he says is directly contrary to the testimony of the other experts for the defendants, and as Chichester himself is interested for the defence (cross-int. 35, p. 45), it is believed that his admission should avail the complainants.

Parker testifies that the Caulier patent, No. 202,788, shows the Kenna chair; also, that the Harris & Childs patent, No. 137,610, anticipates the Kenna invention more or less; he does not say how much; also, that the Gleason patent, No. 215,601, anticipates the Kenna invention, "provided the last element of the second claim includes simply a hook or spring catch" (int. 13, p. 51). He denies that the yielding rest or support F, as shown in the Kenna patent, is in either of the infringing chairs "Exhibit Defendants' Chairs 1, 2, and 3." On cross-examination (int. 59, p. 57) he admits that he knows no chair prior to the date of the filing of Kenna's patent, July 28, 1879, in which the front and rear supports of the seat or seat frame are both made of two or more parts pinned together so that one part can turn on the axis of the pin.

He has a peculiar notion of the yielding rest or support F, and seems to think that it must be a sort of spring which supports the chair seat and the occupant of the chair, and he produces a model, "Exhibit Model of the Kenna Patented Chair," which he admits was made on that theory. A perfectly

plain departure from the drawings of the patent was pointed out to him, but he said that change was "unintentional, an oversight," and yet it is manifest that the change was made by design, and in support of his wholly baseless theory (cross-ints. 63–72, pp. 58–59).

Mr. George I. Alden is a more elaborate expert than either Chichester or Parker, and seems to think that his main province is to show the court the true construction of the claims. Mr. Alden starts out by assuming that a chair frame just as clearly means a seat without legs rigidly attached to it as a seat with legs rigidly attached to it. It is submitted that in this he is plainly mistaken. He asserts that the Caulier patent anticipates the Kenna invention, and it is submitted that he is wrong in this (ints. 11–15, pp. 62, 63). He seems to think that the Gleason patent anticipates the Kenna invention (ints. 18–20, pp. 64, 65).

He states at great length the substance of the File Wrapper and Contents of Kenna's application, on pages 66–70, and makes an elaborate argument that Kenna's second claim must be construed, by reason of the action of the Patent Office, either so as to include the slotted bars G as an element of the combination claimed in the second claim, or else that the second claim must be so narrowly construed that it will not be infringed unless the spring catch or yielding support or rest F be something wholly different from anything described in the Kenna patent; that is to say, be a chair spring supporting the seat and the weight of the occupant; but after an examination of the "Exhibit Duplicate Kenna Patent Office Model," he changes his testimony as to that, and adopts a new theory, that the letter F is a misprint for *f*.

May not all three of his theories be fairly characterized as absurd and groundless?

His argument based upon the state of the art is prolix and not clear; he seems to think that if he can find the elements of Kenna's combination separately in prior patents, or chairs, that

the combination itself is old; but what he probably means to argue is that, taking the Pearl chair and the Caulier, Gleason, Harris & Childs, Patten, and other patents together, there is no invention in Kenna's combination.

It is submitted with great confidence that he is misled by phrases, and that he is wholly blind as to all ingenuity and contrivance displayed in building a chair on a new plan.

It is obvious, for example, that Mr. Alden thinks that the Pearl chair is substantially the same as "Exhibit Complainants' Chair," or any of the other forms of Kenna's chair; and yet it is quite clear that he knows perfectly well that the long supporting frame of the Pearl chair, hinged directly to the seat, has no other resemblance to the short supporting frame A of the Kenna hinged to the front legs of the chair B, except that Mr. Alden has made up his mind that he can fairly call both the seat in the Pearl chair and the chair proper in the Kenna chair "a chair frame," and can also fairly call both the long frame of the Pearl chair and the shorter frame of the Kenna chair "a supporting frame."

Mr. Alden's fondness for phrases is well illustrated by his thirty-ninth answer, pp. 73–74, in which he proves to his own satisfaction that Mr. Stevens, expert for the complainants, agrees with him in his views as to non-infringement, in spite of Mr. Stevens' oath to the contrary.

Mr. Stevens and Mr. Livermore, experts for the complainants, testify fully and clearly; and it is submitted they fully prove that Kenna's combination is an invention, and that it has been copied by the defendants in the infringing chairs Exhibit Defendants' Chairs 1 and 2. Mr. Stevens' testimony is on pp. 14–24. Mr. Livermore testifies on pp. 80–90, 106–118, and 122–123 He says: "The supporting frame of the Kenna chair differs substantially from all others, so far as I know, because it is shortened to the height required to be added to the low chair to make a high chair, and it turns quarter around when the chair is to be used as a low chair; . . . and a

supporting frame having both these features — that is, being shortened and turning quarter around — is, so far as I know, new with Kenna; and the combination of such a supporting frame with the chair frame, bail, and fastening is, in my opinion, a striking novelty of the Kenna invention. The combination of these four elements, each of which is old, makes a radically new chair, for the reason that the supporting frame is in a materially different relation to the other parts, both when the chair is in the high and in the low position; and the mode of operation of the parts is substantially unlike that of any other chair known to me." (Pages 80–81.) On pages 83–88 Mr. Livermore considers all the exhibits in the case. As to the question of invention, see pp. 89–90 and 106–107.

THE BARS *G*.

In the Kenna patent there are two slotted bars, marked G, which prevent the chair B from tipping over forward when the Kenna chair is used as a high chair. The defendants have laid great stress upon the fact that these bars G have not been used in the bulk of the chairs put upon the market under the Kenna patent, and that some other contrivance has been used for preventing the chair B from tipping forward. This defence will be clear from Mr. Alden's answer printed on p. 69, and from that part of his 37th answer printed on p. 73; and the reply to it will be clear from Mr. Livermore's 17th answer, p. 108, and Mr. Stevens' 61st answer, p. 23.

It is therefore confidently submitted that the second claim of the Kenna patent in suit is good and valid in law, and that defendants' chairs known as Exhibit Defendants' Chairs 1 and 2 are improvements of said second claim.

This second claim has been sustained in Waite *v.* Chichester Chair Company, 45 Fed. Rep., 258, since the suit at bar was decided in the court below.

THIRD ERROR ASSIGNED.

As to the third error assigned, the court below erred in holding the chairs marked Exhibits A and B as infringements of said second claim.

Appellants contend that there is no "yielding rest or support F" in their chairs; but it is manifest that the bail E of their chairs is caught and held in place for the reason that a portion of the chair in the path of the upper part of the bail yields to allow that part of the bail to pass, and then returns to place to hold the bail in its proper place for a high chair, precisely as the catch F of Kenna's patent yields, when the bail is forced under it, and returns to place to hold the bail. In one style of appellants' chair a turn button is used, and it is certain that this button must be moved out of the way, or compelled to *yield*, to admit the passage of the bail, and then fall back, or be turned back, to hold the bail.

It will probably be contended that the expression "yielding rest or support F" calls for something which is itself a spring; but it is plain that in appellants' chairs the front legs and the seat frame, when hinged as they are to the supporting frame, constitute together something which is in itself a spring. Consequently they are compelled to go still further, and their ultimate analysis leads them to the conclusion that the patent describes and this claim calls for a device *additional* to the general elasticity of the whole chair, and *additional* to the elasticity of the arch-shaped bail. But such a statement admits that if a *metal* socket which was not in itself a spring were secured to the seat frame so that the bail would be caught by it, either by the elasticity of the whole chair or by the elasticity of the bail, or by both, then this *metal* socket, because additional, *i.e.*, visible as a device *added*, would be part F. This socket or notch is just as plainly in the defendants' chair as if it were an additional piece of metal.

Suppose catch F were omitted from rod *f* in Kenna's patent

and a groove cut in the top of bail E to receive rod *f*, and it turned out that that was a practical fastening for bail E; would it not also be the "yielding rest or support F" of the second claim?

Plainly, as held by the court below, and in Waite *v.* Chichester Chair Co., *ubi supra*, "the spring pressure which holds the bail securely under the chair seat in Exhibits A and B is the equivalent of the yielding rest or support shown in the Kenna patent," for when the chairs Exhibits A and B are adjusted for high chairs, the parts are sprung and the bail engages under the back of the seat, and is held there by spring pressure.

FOURTH ERROR ASSIGNED.

As to the allowance by the court below, in the taxation of costs, of travelling fees of the witnesses Stevens, Kenna, Vanderploeg, and Reed in excess of one hundred miles each, there is no pretence that these witnesses were not called in good faith to testify upon material points. The fees were properly allowed for the entire distance actually travelled by these witnesses.

U.S. *v.* Sanborn, 28 Fed. Rep., 299.

FIFTH ERROR ASSIGNED.

"That the court below allowed full costs to the complainants and appellees, although the same were defeated at final hearing as to one branch of the case, namely, so much of the original suit as was based upon the alleged infringement of said letters patent, No. 224,923, by the manufacture and sale by defendants of the chair known as the Parker chair."

The fact is that complainant prevailed in the court below against four out of five chairs. It is submitted that the question of costs was entirely within the discretion of the court below.

Respectfully submitted by

J. E. MAYNADIER.